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WHEN: Tuesday, December 12, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 71, No. 223

Monday, November 20, 2006

Agricultural Marketing Service
PROPOSED RULES
Cotton research and promotion order:
Cotton Board Rules and Regulations; amendments; withdrawn, 67072

Agriculture Department
See Agricultural Marketing Service
See Energy Policy and New Uses Office, Agriculture Department
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Center for Environmental Health/Agency for Toxic Substances and Disease Registry—Scientific Counselors Board, 67129–67130
Organization, functions, and authority delegations:
Centers for Disease Control and Prevention Director, 67130

Centers for Medicare & Medicaid Services
NOTICES
Privacy Act; systems of records, 67130–67148

Coast Guard
RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Cocheco River Dredging Project, NH, 67055–67057
Kealakekua Bay, HI, 67057–67059

Commerce Department
See Economic Analysis Bureau
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67204–67205

Customs and Border Protection Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67149
Commercial laboratory accreditation:
Inspectorate America Corp.; approval, 67149–67150
Customs broker and national permits; user fees, 67150

Defense Department
NOTICES
Civilian health and medical program of the uniformed services (CHAMPUS):
TRICARE program—
Demonstration project for Alaska, 67112–67113
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 67114
Meetings:
Defense Policy Board Advisory Committee, 67114
Women in Services Advisory Committee, 67114–67115

Economic Analysis Bureau
PROPOSED RULES
International services surveys:
BE-125; transactions in selected services and intangible assets with foreign persons; quarterly survey, 67086–67088

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67115–67117

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 67117

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67164

Energy Department
NOTICES
Environmental statements; notice of intent
Complex 2030; stockpile stewardship and management; meeting location change, 67117–67118

Energy Policy and New Uses Office, Agriculture Department
RULES
Biobased products; designation guidance for federal procurement, 67031–67032

Environmental Protection Agency
RULES
Air pollution control:
State operating permits programs—
Arizona, 67061–67065
Air programs:
Fuels and fuel additives—
Reporting requirements; CFR correction, 67065
NOTICES
Meetings:
Forum on State and Tribal Toxics Action, 67118–67119
Reports and guidance documents; availability, etc.:
Cyanobacterial toxins: anatoxin-a, cylindrospermopsin and microcystins LR, RR, YR and LA; toxicological reviews, 67119–67121
Voluntary Children's Chemical Evaluation Program; implementation, 67121–67124
Water programs:
Blue Ribbon Water Quality Trading Awards, 67124–67125

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67125–67127

Export-Import Bank
NOTICES
Meetings:
Advisory Committee, 67127

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Bombardier, 67079–67082
EADS SOCATA, 67084–67086
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 67075–67077, 67082–67084
Fokker, 67077–67079
Pratt & Whitney, 67073–67075

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 67127–67128

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 67128

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Various States, 67068–67071
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67150

Federal Motor Carrier Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67198–67200
Committees; establishment, renewal, termination, etc.:
Motor Carrier Safety Advisory Committee, 67200–67201
Motor carrier safety standards:
Driver qualifications; diabetes exemptions, 67201–67203

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 67128
Formations, acquisitions, and mergers, 67128

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Suisun thistle and soft bird's-beak, 67089–67092

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Puerto Rico, 67098

Forest Service
NOTICES
Recreation fee areas:
Homochitto National Forest, MS; access fees, 67093

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 67114

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Meetings:
American Health Information Community, 67128–67129

Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration Administrator, 67148

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67150–67151

Industry and Security Bureau
RULES
Export administration regulations:
Foreign policy controls on surreptitious communications intercepting devices; imposition, 67034–67037

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Stainless steel butt-weld pipe fittings from—
Taiwan, 67098–67099
Wooden bedroom furniture from—
China, 67099–67102
Countervailing duties:
Cut-to-length plate from—
Italy; correction, 67102–67103

International Trade Commission
NOTICES
Import investigations:
Foundry coke from—
China, 67161–67162

Justice Department
NOTICES
Pollution control; consent judgments:
Honeywell International, Inc., et al., 67162
Pala Band of Mission Indians, et al., 67162–67163

Labor Department
See Employment Standards Administration

See Labor Statistics Bureau
NOTICES
Reports and guidance documents; availability, etc.:
Federal antidiscrimination, whistleblower protection, and retaliation laws; No FEAR Act notice, 67163–67164

Labor Statistics Bureau
NOTICES
Meetings:
Federal Economic Statistics Advisory Committee, 67164–67165

Land Management Bureau
RULES
Land resource management:
Public sales; segregation time, 67066–67068
NOTICES
Alaska Native claims selection:
NIMA Corp., 67151
Meetings:
Resource Advisory Councils—
Sierra Front-Northwestern Great Basin, 67152
Realty actions; sales, leases, etc.:
Utah, 67152–67153
Survey plat filings:
North Carolina, 67153

Merit Systems Protection Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67165

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67153–67158

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 67114
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Nanoconduction, Inc., 67165–67166

National Highway Traffic Safety Administration
NOTICES
Meetings:
Human factors research necessary to support advanced vehicle safety technologies; forum, 67203–67204

National Institutes of Health
NOTICES
Reports and guidance documents; availability, etc.:
Cardiovascular risk; biomarker consortium, 67148–67149

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska groundfish, 67210–67273
NOTICES
Exempted fishing permit applications, determinations, etc., 67103–67105
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic surfclam and ocean quahog, 67105
Marine mammal permit applications, determinations, etc., 67106
Meetings:
Climate Change Science Program Product Development Committee for Synthesis and Assessment Product 5.3, 67106–67107
Mid-Atlantic Fishery Management Council, 67107
North Pacific Fishery Management Council, 67107–67108
Pacific Fishery Management Council, 67108–67109

National Park Service
NOTICES
Environmental statements; availability, etc.:
Sequoia and Kings Canyon National Parks, CA; general management plan and comprehensive river management plan, 67158–67159

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Shaw, Sally, 67072–67073
NOTICES
Domestic licensing proceedings and issuance of orders:
Panoramic and underwater irradiators; possession of greater than 370 terabecquerels of byproduct material in the form of sealed sources, 67167–67169
Meetings; Sunshine Act, 67169–67170
Reports and guidance documents; availability, etc.:
Consolidated line item improvement process; model safety evaluation, model license amendment technical specification improvement regarding deletion of bar
definition; revision to reactor coolant system specific activity technical specification, 67170–67175
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 67166–67167

Overseas Private Investment Corporation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67175–67176

Patent and Trademark Office
NOTICES
Small business size standards:
Small business concern;, 67109–67112

Personnel Management Office
RULES
Combined Federal Campaign; eligibility requirements and public accountability standards, 67276–67290

Reclamation Bureau
NOTICES
Contract negotiations:
Water service, repayment, and other water-related contract negotiations; quarterly status report, 67159–67161

Rural Business-Cooperative Service
RULES
Program regulations:
Business and industry guaranteed loans; tangible balance sheet equity, 67032–67034
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural Business Enterprise Program, 67093–67097

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67097–67098

Rural Utilities Service
RULES
Program regulations:
Business and industry guaranteed loans; tangible balance sheet equity, 67032–67034

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67176
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 67176–67178
Chicago Board Options Exchange, Inc., 67178–67179
National Association of Securities Dealers, Inc., 67179–67185
National Securities Clearing Corp., 67185–67186
New York Stock Exchange LLC, 67187–67188
Philadelphia Stock Exchange, Inc., 67188–67190

Smithsonian Institution
NOTICES
Environmental statements; notice of intent:
Smithsonian National Museum of African American History and Culture, 67190–67191

Social Security Administration
RULES
Social Security benefits:
Federal old age, survivors, and disability insurance—Visual disorders; evaluation criteria; revision, 67037–67055

State Department
NOTICES
Arms Export Control Act:
Persons violating or conspiring to violate Section 38; statutory debarment, 67191–67192
Grants and cooperative agreements; availability, etc.:
Gilman International Scholarship Program, 67192–67197
Reports and guidance documents; availability, etc.:
Federal antidiscrimination, whistleblower protection, and retaliation laws; No FEAR Act notice, 67197–67198
Summer Work Travel Programs; policy statement, 67198

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Military retired pay and veterans disability compensation for certain military retirees; full concurrent receipt phase-in, 67059–67061
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 67205–67207
Meetings:
Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, 67207

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 67210–67273

Part III
Personnel Management Office, 67276–67290

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
950 67276

7 CFR
2902 67031
4279 67032

Proposed Rules:
1205 67072

10 CFR

Proposed Rules:
51 67072

14 CFR

Proposed Rules:
39 (6 documents) 67073, 67075, 67077, 67079, 67082, 67084

15 CFR
730 67034
738 67034
740 67034
742 67034
746 67034
750 67034
752 67034
774 67034
902 67210

Proposed Rules:
801 67086

20 CFR
404 67037

33 CFR
165 (2 documents) 67055, 67057

38 CFR
3 67059

40 CFR
70 67061
80 67065

43 CFR
2091 67066
2710 67066

44 CFR
67 67059

50 CFR
679 67210

Proposed Rules:
17 67089

Rules and Regulations

Federal Register
Vol. 71, No. 223
Monday, November 20, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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 AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA29

Designation of Biobased Items for Federal Procurement

AGENCY: Office of Energy Policy and New Uses, USDA.

ACTION: Final rule; establishment of effective date.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending 7 CFR part 2902, Guidelines for Designating Biobased Products for Federal Procurement, to establish the effective date by which procuring agencies must give a procurement preference for qualifying biobased water tank coatings and bedding, bed linens, and towels. These two items were designated for procurement preference in a final rule published by USDA on March 16, 2006 (71 FR 13686). At that time, however, the effective date by which procuring agencies were required to give these two designated items procurement preference was deferred until such time that additional manufacturers of products within these designated items were identified. This final rule announces that additional manufacturers have been identified for each item and establishes the effective date by which procuring agencies must give these two designated items procurement preference.

DATES: This rule is effective November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Marvin Duncan, USDA, Office of the Chief Economist, Office of Energy Policy and New Uses, Room 4059, South Building, 1400 Independence Avenue, SW., MS–3815, Washington, DC 20250–3815; e-mail: *mduncan@oce.usda.gov;* phone: (202) 401–0461. Information regarding the Federal Biobased Products Preferred Procurement Program is available on the Internet at *http://www.biobased.oce.usda.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
C. Executive Order 12988: Civil Justice Reform
D. Executive Order 13132: Federalism
E. Unfunded Mandates Reform Act of 1995
F. Executive Order 12372: Intergovernmental Review of Federal Programs
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

I. Authority

The Guidelines for Designating Biobased Products for Federal Procurement (the Guidelines) were established under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8102 (referred to in this document as ''section 9002''), as amended by the Energy Policy Act of 2005 (Pub. L. 109–58).

II. Background

On March 16, 2006, USDA published in the **Federal Register** (71 FR 13686) a final rule designating six items within which biobased products will be afforded procurement preference, as required by section 9002 of FSRIA. In that final rule, USDA established an effective date of March 16, 2007, as the date by which procuring agencies must give procurement preference to four of the six items. However, as discussed in the preamble to the March 16, 2006, final rule, USDA deferred establishing an effective date for the other two items because only one manufacturer of a biobased product within each of these items had been identified. The two items for which an effective date was deferred were water tank coatings and bedding, bed linens, and towels.

In the March 16, 2006, **Federal Register** notice, USDA announced that a preferred procurement effective date would be established for water tank coatings and bedding, bed linens, and towels after two or more manufacturers of biobased products within these items were identified. With today's final rule, USDA is announcing that additional manufacturers of products within these two designated items have been identified. As it has done with all manufacturers of qualifying biobased products, USDA invites these manufacturers of qualifying products to post information on the product, contact information, and performance testing on its FB4P Web site, *http://www.biobased.oce.usda.gov.* Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated item.

III. Summary of Changes

This final rule amends subsections 2902.12(c) and 2902.15(c) to specify the dates by which procuring agencies must give procurement preference to biobased products within the water tank coatings and bedding, bed linens, and towels designated items, respectively. USDA is establishing a preference effective date of November 20, 2007 for these two designated items. This effective date allows procuring agencies a one-year period for the implementation of the procurement preference.

IV. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

B. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

C. Executive Order 12988: Civil Justice Reform

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

D. Executive Order 13132: Federalism

This final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's final rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

■ For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY POLICY AND NEW USES, DEPARTMENT OF AGRICULTURE

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Revise paragraph (c) of § 2902.12 to read as follows:

§ 2902.12 Water tank coatings.

* * * * *

(c) *Preference effective date.* No later than November 20, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water tank coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased water tank coatings.

■ 3. Revise paragraph (c) of § 2902.15 to read as follows:

§ 2902.15 Bedding, bed linens, and towels.

* * * * *

(c) *Preference effective date.* No later than November 20, 2007, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bedding, bed linens, and towels. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bedding, bed linens, and towels.

Dated: November 14, 2006.

Keith Collins,

Chief Economist, U.S. Department of Agriculture.

[FR Doc. E6–19587 Filed 11–17–06; 8:45 am]

BILLING CODE 3410–GL–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4279

RIN 0570–AA54

Business and Industry Guaranteed Loan Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: Rural Business-Cooperative Service (RBS) amends its regulations for the Business and Industry (B&I) Guaranteed Loan Program by modifying the regulation regarding personal and corporate guarantors. This action will standardize the guarantor process. The Agency has created a guarantor form which will be used to obtain the personal or corporate guarantee of anyone owning greater than 20 percent interest in the borrower. The effect of this rule is to allow the Agency to use all remedies available to pursue collection from guarantors, including offset under the Debt Collection Improvement Act.

DATES: This rule is effective December 20, 2006.

FOR FURTHER INFORMATION CONTACT: David Lewis, Business and Industry Loan Servicing Branch, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 690–0797, or by e-mail to *david.lewis@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12866 and determined not to be significant and has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.768, Business and Industry Loans.

Intergovernmental Review

Business and Industry Guaranteed Loans are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation is required in the manner delineated in RD Instruction 1940–J and 7 CFR part 3015, subpart V, ''Intergovernmental Review of Rural Development Programs and Activities.''

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule, (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, this regulation is a Categorical Exclusion. Loan applications will be reviewed individually to determine compliance with NEPA.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of, Pub. L. 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS 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, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), RBS has determined that this action would not have a significant economic impact on a substantial number of small entities. RBS made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Executive Order 13132

It has been determined that, under Executive Order 13132, Federalism, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, imposes requirements on USDA in the development of regulatory policies that have tribal implications or pre-empt tribal laws. USDA has determined that the regulation does not have a substantial direct effect on one or more Indian tribe or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this regulation has been approved by OMB control number 0570–0017.

E-Government Act Compliance

The Rural Business-Cooperative Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Discussion

Pursuant to the Debt Collection Improvement Act of 1996 (DCIA), the Agency is required to send the debt owed to the Government to the Department of the Treasury (Treasury) for collection. The DCIA covers both guaranteed and direct loans made by the Agency. Some ambiguity has existed regarding the Agency's ability to collect from guarantors of the borrower's loan. This rule will end that ambiguity by clearly making guarantors personally liable for any claims paid by the Government.

The Agency will establish more uniformity in the guarantees being obtained by lenders. This should result in the program being administered more consistently and the Government recovering more of its loss claims. Currently, guaranteed lenders prepare non-uniform, personal, or corporate guarantees. When there is a loss on the guaranteed loan, the lender pursues these guarantees with mixed recovery results. By implementing this rule, the Agency will treat all guarantors consistently, collect more money on its loss claims, and rectify any ambiguities regarding its ability to refer these debts to Treasury.

Comments on the Proposed Rule and Responses

A proposed rule was published on April 7, 2005, [70 FR 17616–17618] and no comments were received.

List of Subjects in 7 CFR Part 4279

Loan programs—Business and industry—Rural development assistance, Rural areas.

■ Therefore, chapter XLII, title 7, Code of Federal Regulations, is amended as follows:

PART 4279—GUARANTEED LOANMAKING

■ 1. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B—Business and Industry Loans

■ 2. Section 4279.149 is revised to read as follows:

§ 4279.149 Personal and corporate guarantee.

(a) Unconditional personal and corporate guarantees are part of the collateral for the loan, but are not considered in determining whether a loan is adequately secured for loanmaking purposes. Agency approved personal and corporate guarantees for the full term of the loan and at least equal to the guarantor's percent interest in the borrower, times the loan amount are required from those owning greater than a 20 percent interest in the borrower, unless the lender documents to the Agency's satisfaction that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan. The guarantors will execute an Agency approved unconditional guarantee form. When warranted by an Agency assessment of potential financial risk, Agency approved guarantees may also be required of parent, subsidiaries, or affiliated companies (owning less than a 20 percent interest in the borrower) and require security for any guarantee provided under this section.

(b) Exceptions to the requirement for personal guarantees must be requested by the lender and concurred by the Agency approval official on a case-by-case basis. The lender must document that collateral, equity, cashflow, and profitability indicate an above-average ability to repay the loan.

Dated: October 4, 2006.

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 06–9262 Filed 11–17–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 738, 740, 742, 746, 750, 752, and 774

[Docket No. 050428118–5118–01]

RIN 0694–AC82

Imposition of Foreign Policy Controls on Surreptitious Communications Intercepting Devices

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by imposing new foreign policy export and reexport controls on devices primarily useful for the surreptitious interception of wire, oral, or electronic communications classified under Export Control Classification Number (ECCN) 5A980. In this rule, BIS also imposes controls on related software and technology by creating ECCNs 5D980 and 5E980. BIS is taking this action in order to prevent the unlawful interception of oral, wire, or electronic communications by terrorists and others who may put the information gained through intercepted communications to an unlawful use, to promote the protection of privacy of oral, wire, or electronic communications; and to protect against threats of terrorism around the world.

DATES: This rule is effective November 20, 2006.

ADDRESSES: Although there is no formal comment period, public comments on this regulation are welcome and should be sent to *publiccomments@bis.doc.gov*, by fax (202) 482–3355 or by mail or hand delivery to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AC82 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Roster@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Telephone (202) 482–4252, or E-mail: *jroberts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

This rule amends the Export Administration Regulations (EAR) by imposing new foreign policy controls (''SL'' for surreptitious listening) on devices primarily useful for the surreptitious interception of wire, oral, or electronic communications, as well as related software and technology. The Bureau of Industry and Security (BIS) is taking this action in order to prevent the unlawful interception of oral, wire, or electronic communications by terrorists and others who may put the information gained through intercepted communications to an unlawful use; to promote the protection of privacy of oral, wire, or electronic communications; and to protect against threats of terrorism around the world. This rule amends the EAR by imposing a license requirement for SL reasons to all destinations on devices primarily useful for surreptitious interception of wire, oral or electronic communications classified under Export Control Classification Number (ECCN) 5A980. This rule also imposes controls on related software and technology by creating ECCN 5D980 for software primarily useful for the surreptitious interception of wire, oral, or electronic communications, and software primarily useful for the ''development'', ''production'', or ''use'' of devices controlled under ECCN 5A980; and by creating ECCN 5E980 for technology primarily useful for the ''development'', ''production'', or ''use'' of devices controlled under ECCN 5A980.

This rule also imposes a license requirement for AT reasons on exports and reexports of items controlled under 5A980, 5D980, or 5E980 to Cuba, Iran, North Korea, Sudan, and Syria. BIS will generally deny all applications involving terrorist supporting countries and those involving a material contribution to certain proliferation activities as set forth in part 744 of the EAR.

BIS will generally approve applications for the export and reexport of items classified under 5A980, 5D980, or 5E980 to all other destinations, except for destinations for which a license is required for AT reasons, by providers of wire or electronic communication service acting in the normal course of business; or officers, agents, or employees of, or persons under contract with, the United States, a State, or a political subdivision thereof in the normal course of activities of any of the governmental entities listed. License applications from other parties will generally be denied.

The license requirement for 5A980, 5D980, and 5E980 items is not reflected on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). The requirement is set forth at the entries for ECCNs 5A980, 5D980, and 5E980 on the Commerce Control List (CCL) in part 774 of the EAR and also in section 742.13(a) of the EAR. Section 742.13(b) of the EAR sets forth the licensing policy for surreptitious communications intercepting devices controlled under 5A980, as well as related software and technology controlled under newly created ECCNs 5D980 and 5E980.

The license requirements set forth in the EAR are independent of the requirements of section 2512 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. 2512). These controls do not supersede, nor do they implement, construe, or limit the scope of any of the statutory restrictions of section 2512 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, that are enforced by the U.S. Department of Justice.

This rule maintains the restriction on License Exception availability for the export or reexport of items primarily useful for surreptitious interception of wire, oral, or electronic communications, or related software, controlled under ECCNs 5A980, as set forth in section 740.2(a), Restrictions on all License Exceptions, of the EAR. Only License Exception Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV) is available to export or reexport such items if consigned to and for the official use of an agency of the U.S. Government, as set forth in section 740.11(b)(2)(ii) of the EAR. This rule places the same restrictions on License Exception availability for software controlled under new ECCN 5D980. No License Exceptions are available for the export or reexport of technology useful for surreptitious interception of wire, oral, or electronic communications covered under new ECCN 5E980.

This action is taken after consultation with the Secretary of State. BIS submitted a foreign policy report to the

Congress indicating the imposition of new foreign policy controls on September 22, 2006.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44551, August 7, 2006), continues the Regulations in effect under the International Emergency Economic Powers Act. BIS amends the EAR in this rule under the provisions of the EAA as continued in effect under IEEPA and Executive Order 13222.

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are not impacted by this regulation. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 738

Exports.

15 CFR Part 740, 750, 752

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 730, 738, 740, 742, 746, 750, 752 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note, Pub. L. 108–175; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of October 25, 2005, 70 FR 62027 (October 27, 2005); Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

PART 738—[AMENDED]

■ 2. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 3. Section 738.2 is amended by amending paragraph (d)(2)(i)(A) to add an entry to the end of the list to read as follows:

§ 738.2 Commerce Control List (CCL) structure.

* * * * *

(d) * * *
(2) * * *
(i) * * *
(A) * * *

SL Surreptitious Listening

* * * * *

■ 4. Section 738.3 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 738.3 Commerce Country Chart structure.

(a) * * *

(1) *ECCNs 0A983, 5A980, 5D980, and 5E980.* A license is required for all destinations for items controlled under these entries. For items controlled by 0A983 and 5E980, no License Exceptions apply. For items controlled by 5A980 and 5D980, License Exception GOV may apply if your item is consigned to and for the official use of an agency of the U.S. Government (see § 740.2(a)(3)). If your item is controlled by 0A983, 5A980, 5D980, or 5E980 you should proceed directly to part 748 of the EAR for license application instructions and § 742.11 or § 742.13 of the EAR for information on the licensing policy relevant to these types of applications.

(2) [Reserved]

* * * * *

PART 740—[AMENDED]

■ 5. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 6. Section 740.2 is amended by revising paragraph (a)(3) to read as follows:

§ 740.2 Restrictions on all license exceptions.

(a) * * *

(3) The item is primarily useful for surreptitious interception of wire, oral, or electronic communications, or related software, controlled under ECCNs 5A980 or 5D980, unless the item is consigned to and for the official use of an agency of the U.S. Government (see § 740.11(b)(2)(ii) of this part, Governments (GOV)).

* * * * *

PART 742—[AMENDED]

■ 7. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of October 25, 2005, 70 FR 62027 (October 27, 2005); Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 8. Section 742.13 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 742.13 Communications intercepting devices; software and technology for communications intercepting devices.

(a) *License requirement.* (1) In support of U.S. foreign policy to prohibit the export of items that may be used for the surreptitious interception of wire, oral, or electronic communications, a license is required for all destinations, including Canada, for ECCNs having an ''SL'' under the ''Reason for Control'' paragraph. These items include any electronic, mechanical, or other device primarily useful for the surreptitious interception of wire, oral, or electronic communications (ECCN 5A980); and for related software primarily useful for the surreptitious interception of wire, oral, or electronic communications, and software primarily useful for the ''development'', ''production'', or ''use'' of devices controlled under ECCN 5A980 (ECCN 5D980); and technology primarily useful for the ''development'', ''production'', or ''use'' of devices controlled under ECCN 5A980 (ECCN 5E980). These licensing requirements do not supersede the requirements contained in the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. Section 2512). This license requirement is not reflected on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR).

(2) ''Communications intercepting devices'' are electronic, mechanical, or other devices that can be used for interception of wire, oral, or electronic communications if their design renders them primarily useful for surreptitious listening even though they may also have innocent uses. A device is not restricted merely because it is small or may be adapted to wiretapping or eavesdropping. Some examples of devices to which these restrictions apply are: the martini olive transmitter; the infinity transmitter; the spike mike; and the disguised microphone appearing as a wristwatch, cufflink, or cigarette pack; etc. The restrictions do not apply to devices such as the parabolic microphone or other directional microphones ordinarily used by broadcasters at sports events, since these devices are not primarily useful for surreptitious listening.

(b) *Licensing policy.* (1) License applications, except for those applications for which a license is required for both SL and AT reasons, will generally be approved for exports or reexports requiring a license for SL reasons when the exporter or reexporter is:

(i) A provider of wire or electronic communication services or an officer, agent, or employee of, or person under contract with such a provider, in the normal course of the business of providing that wire or electronic communication service; or

(ii) An officer, agent, or employee of, or a person under contract with, the United States, one of the 50 States, or a political subdivision thereof, when engaged in the normal course of government activities.

Note to Paragraph (b)(1): For SL reasons, license applications will generally be denied to countries that are subject to controls for AT reasons.

Note to Paragraph (b)(1)(i): The normal course of the business of providing a wire or electronic communications service includes any activity which is a necessary incident to the rendition of the service or to the protection of the rights and property of the provider of that service.

(2) Other license applications will generally be denied for exports or reexports requiring a license for SL reasons.

* * * * *

(d) *U.S. controls.* Controls on items classified under ECCNs 5A980, 5D980, and 5E980 are maintained by the United States government for foreign policy purposes.

PART 746—[AMENDED]

■ 9. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec. 1503, Pub. L. 108–11,117 Stat. 559; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

§ 746.3 [Amended]

■ 10. Section 746.3 is amended by revising the phrase ''for NS, MT, NP, CW, CB, RS, CC, EI, or SI reasons.'' in paragraph (a)(1) to read ''for NS, MT, NP, CW, CB, RS, CC, EI, SI, or SL reasons.''

§ 746.7 [Amended]

■ 11. Section 746.7 is amended in paragraph (a)(2)(i) by adding the phrase ''5D980, 5E980,'' after ''5A980,''.

§ 746.8 [Amended]

■ 12. Section 746.8 is amended in paragraph (b)(1)(ii) by adding the phrase ''5D980; 5E980;'' after ''5A980;''.

PART 750—[AMENDED]

■ 13. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108–11,117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 14. Section 750.3 is amended by revising paragraph (b)(2)(v) to read as follows:

§ 750.3 Review of license applications by BIS and other government agencies and departments.

* * * * *

(b) * * *

(2) * * *

(v) The Department of Justice is concerned with controls relating to encryption items and items primarily useful for the surreptitious interception of wire, oral, or electronic communications.

PART 752—[AMENDED]

■ 15. The authority citation for 15 CFR part 752 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 16. Section 752.3 is amended by revising paragraph (a)(7) to read as follows:

§ 752.3 Eligible items.

(a) * * *

(7) Communications intercepting devices and related software and technology controlled by ECCN 5A980, 5D980, or 5E980 on the CCL;

* * * * *

PART 774—[AMENDED]

■ 17. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 18. In Supplement No. 1 to Part 774, the Commerce Control List, Category 5 (Telecommunications), is amended by revising the ''License Requirements'' section for Export Control Classification Number (ECCN) 5A980 to read as follows:

5A980 Devices primarily useful for the surreptitious interception of wire, oral, or electronic communications; and parts and accessories therefor.

License Requirements

Reason for Control: SL, AT.

Control(s): SL and AT apply to entire entry. A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR).

Note: This licensing requirement does not supersede, nor does it implement, construe or limit the scope of any criminal statute, including, but not limited to the Omnibus Safe Streets Act of 1968, as amended.

Note: These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 746.8 of the EAR.

* * * * *

■ 19. In Supplement No. 1 to Part 774, the Commerce Control List, Category 5 (Telecommunications), is amended by adding new Export Control Classification Number (ECCN) 5D980 to read as follows:

5D980 Other ''software'', as follows (see List of Items Controlled).

License Requirements

Reason for Control: SL, AT.

Controls: SL and AT apply to entire entry. A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR).

Note: This licensing requirement does not supersede, nor does it implement, construe or limit the scope of any criminal statute, including, but not limited to the Omnibus Safe Streets Act of 1968, as amended.

Note: These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 746.8 of the EAR.

License Exceptions

CIV: N/A.

TSR: N/A.

List of Items Controlled

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

a. ''Software'' primarily useful for the surreptitious interception of wire, oral, and electronic communications.

b. ''Software'' primarily useful for the ''development'', ''production'', or ''use'' of equipment controlled by 5A980.

■ 20. In Supplement No. 1 to Part 774, the Commerce Control List, Category 5 (Telecommunications), is amended by adding new Export Control Classification Number (ECCN) 5E980 to read as follows:

5E980 ''Technology'' primarily useful for the ''development'', ''production'', or ''use'' of equipment controlled by 5A980.

License Requirements

Reason for Control: SL, AT.

Controls: SL and AT apply to entire entry. A license is required for all destinations, as specified in § 742.13 of the EAR. Accordingly, a column specific to this control does not appear on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR).

Note: These items are subject to the United Nations Security Council arms embargo against Rwanda described in § 746.8 of the EAR.

License Exceptions

CIV: N/A.

TSR: N/A.

List of Items Controlled

Unit: $ value.

Related Controls: N/A.

Related Definitions: N/A.

Items:

The list of items controlled is contained in the ECCN heading.

* * * * *

Dated: November 13, 2006.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E6–19509 Filed 11–17–06; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2006–0098]

RIN 0960–AF34

Revised Medical Criteria for Evaluating Visual Disorders

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving visual disorders. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The revisions reflect our program experience and advances in medical knowledge, treatment, and methods of evaluating visual disorders.

DATES: These rules are effective February 20, 2007.

FOR FURTHER INFORMATION CONTACT: Michelle Hungerman, Social Insurance Specialist, Office of Disability and Income Security Programs, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2289 or TTY (410) 966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

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

We are revising and making final the rules we proposed for evaluating visual disorders in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 17, 2005 (70 FR 48342). We provide a summary of the provisions of the final rules below, with an explanation of the changes we have made from the text in the NPRM. We then provide summaries of the public comments and our reasons for adopting or not adopting the recommendations in those comments in the section ''Public Comments.'' The final rule language follows the Public Comments section.

What programs do these final regulations affect?

These final regulations affect disability and blindness determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability or blindness benefits under title II or title XVI, these final regulations also affect the Medicare and Medicaid programs.

Who can get disability or blindness benefits?

Under title II of the Act, we provide for the payment of disability benefits, including disability benefits based on blindness if you are disabled and belong to one of the following three groups:

- Workers insured under the Act;
- Children of insured workers; and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability or blindness if you are disabled or blind and have limited income and resources.

Is blindness treated differently under title II and title XVI?

Under title II, impairments that result in ''blindness'' are evaluated in the same way as other impairments. However, under title XVI, ''blindness'' is considered separately from other impairments under different eligibility requirements. In other words, under title XVI, you may qualify for benefits on the basis of ''blindness'' or on the basis of ''disability.''

How do we define blindness?

For both the title II and title XVI programs, the Act defines blindness as ''central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered * * * as having a central visual acuity of 20/200 or less.'' (Sections 216(i)(1) and 1614(a)(2) of the Act.) We refer to the Act's definition of blindness as ''statutory blindness.''

If you are seeking benefits under title II, your blindness generally must meet the 12-month statutory duration requirement. However, if you are seeking payments under title XVI of the Act based on blindness (rather than disability, as discussed below), your blindness need not meet the 12-month statutory duration requirement. Also, if you are seeking payments under title XVI of the Act based on blindness, there is no requirement that you be unable to do any substantial gainful activity (SGA). However, if you are working, we will consider your earnings to determine if you are eligible for SSI payments.

How do we define disability?

If your visual disorder does not meet our definition of blindness, you may still be eligible for disability benefits. Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under * * *	And you are * * *	Disability means you have a medically determinable impairment(s) as described above that results in * * *
title II	an adult or a child	the inability to do any SGA.
title XVI	a person age 18 or older	the inability to do any SGA.
title XVI	a person under age 18	marked and severe functional limitations.

There is also an additional definition of disability if you are seeking benefits under title II of the Act, have attained age 55, and have blindness as defined in section 216(i)(1) of the Act: Disability means that the blindness has resulted in the inability to engage in SGA requiring skills or abilities comparable to those of any gainful activity in which you previously engaged with some regularity and over a substantial period of time. (See section 223(d)(1)(B) of the Act.)

How do we decide whether you are disabled?

If you are seeking benefits under title II of the Act, or if you are an adult seeking payments under title XVI of the Act, we use a five-step ''sequential evaluation process'' to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and if so, is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a ''severe'' impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age,

education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. However, all of the processes include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

What are the listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How do we use the listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we do not use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and your specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe as an impairment in the listings. (See §§ 404.1526 and 416.926.)

What if you do not have an impairment(s) that meets or medically equals a listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will not deny your claim because your impairment(s) does not meet or medically equal a listing. If you are not doing work that is substantial gainful activity, and you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process'' described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended because we have changed a listing. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you had qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled the listings. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled depending on the full circumstances of your case. (See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A).) If you are a child who is eligible for SSI payments, we follow a similar rule after we decide that you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

Why are we revising the listings for visual disorders?

We are making these revisions to update the medical criteria in the listings for visual disorders and to provide more information about how we evaluate visual disorders.

The listings for visual disorders, disturbances of labyrinthine-vestibular function, hearing impairments, and loss of speech are contained in listings for Special Senses and Speech. In these final rules, we are making changes only to the listings for visual disorders.

On April 24, 2002, we published final rules in the **Federal Register** (67 FR 20018) that included technical revisions to the listings for special senses and speech disorders. Prior to this, we published final rules that included revisions to the special senses and speech listings in the **Federal Register** on December 6, 1985 (50 FR 50068). We last published final rules making comprehensive revisions to the part A special senses and speech listings in the **Federal Register** on March 27, 1979 (44 FR 18170), and final rules making comprehensive revisions to the part B special senses and speech listings on March 16, 1977 (42 FR 14705). We intend to publish separately proposed rules that would update the criteria for the other disorders included in the Special Senses and Speech listings.

What do we mean by ''final rules'' and ''prior rules''?

Even though these rules will not go into effect until 90 days after publication of this notice, for clarity, we refer to the changes we are making here as the ''final rules'' and to the rules that will be changed by these final rules as the ''prior rules.''

When will we start to use these final rules?

We will start to use these final rules on their effective date. We will continue to use our prior rules until the effective date of these final rules. When the final rules become effective, we will apply them to new applications filed on or after the effective date of these rules and to claims pending before us, as we describe below.

As is our usual practice when we make changes to our regulations, we will apply these final rules on or after their effective date whenever we make a determination or decision, including in those claims in which we make a determination or decision after remand to us from a Federal court. With respect to claims in which we have made a final decision and that are pending judicial review in Federal court, we expect that the court's review of the Commissioner's final decision would be made in accordance with the rules in effect at the time the final decision of the Commissioner was issued. If a court reverses the Commissioner's final decision and remands the case for further administrative proceedings after the effective date of these final rules, we will apply the provisions of these final rules to the entire period at issue in the claim in our new decision issued pursuant to the court's remand.

How long will these final rules be effective?

These final rules will no longer be effective 8 years after the date on which they become effective, unless we extend them, or revise and issue them again.

How are we changing the introductory text to the special senses and speech listings for adults?

2.00 Special Senses and Speech

We are removing the following sections of prior 2.00:

- The last paragraph of 2.00A3, ''Field of vision.''
- Paragraph 2.00A4, ''Muscle function.''
- The first paragraph of 2.00A6, ''Special situations.''

The last paragraph of prior 2.00A3, ''Field of vision,'' explained that when the visual field loss was predominantly in the lower visual fields, a system such as the weighted grid scale for perimetric fields as described by B. Esterman in 1968 could be used for determining whether the visual field loss was comparable to that described in table 2 in section 2.00 of the listings. As this kind of scale is rarely used, we no longer need this guidance in the introductory text.

Prior 2.00A4, ''Muscle function,'' described the type of impairment evaluated under prior listing 2.06, ''Total bilateral ophthalmoplegia.'' (Ophthalmoplegia is paralysis of the eye muscles.) As the causes of this disorder are now more readily detectable and treatable, this disorder has become extremely rare. Therefore, we are removing both the prior listing and the guidance in the introductory text that addressed this disorder. Instead, we will evaluate total bilateral ophthalmoplegia and other eye muscle disorders by assessing the impact of such disorders on your visual efficiency under final listing 2.04, or based on your visual functioning.

The first paragraph of prior 2.00A6, ''Special situations,'' explained how we calculated visual acuity efficiency for individuals with aphakia (the absence of the anatomical lens of the eye). Advances in technology have led to the development of effective synthetic intraocular lenses. Also, contact lenses have been technically refined and may be used in those instances in which the anatomical lens is not replaced with a synthetic lens. Because the synthetic intraocular lens or the contact lens corrects both the visual acuity and the visual field, we compute the visual acuity efficiency or visual field efficiency as though your eye has an anatomical lens.

We are reorganizing and expanding the rest of the introductory text for visual disorders to provide additional guidance. The following is a detailed explanation of the final introductory text.

2.00A—How do we evaluate visual disorders?

This section corresponds to prior 2.00A, ''Disorders of Vision.'' We are clarifying the information in the prior section by reorganizing the material into eight subsections and by providing additional guidance as explained below.

2.00A1—What are visual disorders?

This section corresponds to prior 2.00A1, ''Causes of impairment.'' We are making nonsubstantive editorial changes for clarity.

2.00A2—How do we define statutory blindness?

This section revises prior 2.00A7, ''Statutory blindness,'' to include the statutory definition. In response to a public comment, we have added an explanation that we use your best-corrected visual acuity for distance in the better eye when we determine if you have statutory blindness based on visual acuity loss. We also clarify that you have statutory blindness only if your visual disorder meets the criteria of 2.02 or 2.03A. We further clarify that you do not have statutory blindness if your visual disorder medically equals the criteria of 2.02 or 2.03A, or if it meets or medically equals 2.03B, 2.03C, or 2.04. If your visual disorder medically equals the criteria of 2.02 or 2.03A, or if it meets or medically equals 2.03B, 2.03C, or 2.04, we will find that you have a disability if your visual disorder also meets the duration requirement.

In the NPRM, this section was headed ''What is statutory blindness?'' We are changing the heading to be consistent with other headings in this section.

2.00A3—What evidence do we need to establish statutory blindness under title XVI?

In this new section, we explain that when we make a determination or decision that you have statutory blindness under title XVI, we require evidence showing only that the statutory criteria are satisfied; we do not need evidence to document the visual disorder that causes the blindness. We also explain that there is no duration requirement for statutory blindness under title XVI.

We are adding this section because blindness is treated differently under title II and title XVI of the Act. Under title II, blindness is generally evaluated in the same way as other medical impairments. Under title XVI, blindness and disability are separate categories, and the requirements for eligibility based on blindness are different from the requirements for eligibility based on disability.

2.00A4—What evidence do we need to evaluate visual disorders, including those that result in statutory blindness under title II?

We are revising the last sentence of prior 2.00A1 to explain what evidence we need to evaluate a visual disorder. In response to public comments, we have revised proposed 2.00A4b to refer to a ''cortical visual disorder'' instead of ''cortical blindness'' and provided additional guidance on cortical visual disorders and how to document them.

2.00A5—How do we measure best-corrected visual acuity?

We are revising the guidance in the second sentence of prior 2.00A2, ''Visual acuity,'' by providing that, in addition to testing that uses Snellen methodology, we may also use visual acuity measurements obtained using another testing methodology that is comparable to Snellen methodology. We also clarify what constitutes best-corrected visual acuity.

In the NPRM, we proposed, in 2.00A5b(i), that we would not use the results of visual evoked response (VER) testing to determine best-corrected visual acuity. This guidance was questioned by several commenters who indicated that no response to VER testing demonstrates that an individual cannot see in that eye. We agree with these commenters, and have revised proposed 2.00A5b(i) to indicate that if you have an absent response to VER testing in an eye, we can use that result to determine that your visual acuity is 20/200 or less in that eye. However, we will not use a positive response to VER testing to determine best-corrected visual acuity. VER testing evaluates the function of the visual pathways from the retina, along the optic nerve and optic tract, to the vision cortex in the occipital lobe of the brain. While this testing can provide an estimate of visual acuity, it is not a direct measure of visual acuity.

We also provide that we will not use pinhole testing to determine best-corrected visual acuity. Pinhole testing is used to determine whether your visual acuity can be improved with a corrective lens. However, you may not achieve the same degree of correction with corrective lenses that you have with pinholes. Additionally, even when pinhole testing fails to show an improvement in your acuity, your acuity may improve with corrective lenses. Because pinhole testing may underestimate or overestimate your visual acuity, we will not use it to determine your best-corrected visual acuity.

In response to a public comment, we have also added guidance in final 2.00A5b(i) explaining that we will not use automated refraction acuity to determine your best-corrected visual acuity. An automated refractor is a machine that measures how light is changed as it enters the eye. It is used to provide an estimate of refractive error and the prescription for glasses. This estimate gives the clinician a place to start in determining the best-corrected visual acuity; it is not a direct measure of visual acuity.

In response to another public comment, we have added guidance in final 2.00A5b(ii) to explain that best-corrected visual acuity for distance is your best acuity at 20 feet, and to explain how we use visual acuity measurements obtained for other distances.

2.00A6—How do we measure visual fields?

This section replaces prior 2.00A3, ''Field of vision.'' Prior 2.00A3 indicated that we would use ''usual perimetric methods'' or other ''comparable perimetric devices'' to measure the size of the visual field. The Goldmann perimeter was cited as a comparable perimetric device.

The National Research Council (NRC), in its 2002 report, *Visual Impairments: Determining Eligibility for Social Security Benefits* (hereinafter, the ''NRC report''), recommended that ''the current SSA standard [for assessing visual field loss] should be revised so that disability determinations are based on the results of automated static projection perimetry rather than Goldmann (kinetic, nonautomated) visual fields.'' (Citations for the NRC report and other sources cited in this preamble are available in the NPRM (70 FR at 48348).) These final rules partially adopt this recommendation by providing that we will use visual field measurements obtained with an automated static threshold perimetry test performed on a perimeter that meets our requirements. However, we have decided that we will also continue to use visual field measurements obtained with Goldmann or other kinetic perimetry as these measurements are comparable to those obtained with automated static threshold perimetry.

In final 2.00A6a(i), we explain when we need visual field testing. In response to a public comment, we have deleted macular edema as an example of a visual disorder that could cause visual field loss.

In final 2.00A6a(ii), we explain that, when we need to measure the extent of your visual field loss, we will use visual field measurements obtained with an automated static threshold perimetry test performed on a perimeter that meets our requirements. We adopted as our requirements the criteria recommended in the NRC report. We cite the Humphrey Field Analyzer as an example of an acceptable perimeter because the NRC report cited it, and the Humphrey Field Analyzer is the most widely used automated perimeter in the United States to perform this type of test.

The NRC report also cited the Octopus perimeter as another example of an automated perimeter that meets the criteria set out in its recommendations. We have not included the Octopus perimeter as an example of an acceptable perimeter in final 2.00A6a(ii), because it is not our intention to list in these rules every acceptable automated perimeter and the Octopus perimeter is not widely used in the United States. However, we will accept findings from the Octopus perimeter or any other automated perimeter that satisfies the requirements of final 2.00A6a(ii).

In final 2.00A6a(iii), we describe the requirements of an acceptable automated static threshold perimetry test.

In final 2.00A6a(iv), we explain that we need a test that measures the central 24 to 30 degrees of the visual field to determine statutory blindness. We also provide examples of acceptable tests. In response to a public comment, we have added a reference to final listing 2.03A in this section.

In proposed 2.00A6a(v), we indicated that to determine if the criterion in listing 2.03B is met, we need a test performed on a Humphrey Field Analyzer that measures the central 30 degrees of the visual field. We also indicated that we could use comparable results from other acceptable perimeters. In response to a comment that these two statements were inconsistent with each other, we have clarified this section to explain that while the criterion in final listing 2.03B is based on using a test performed on a Humphrey Field Analyzer that measures the central 30 degrees of the visual field, we can also use comparable results from other acceptable perimeters. We also provide an example of a comparable result. Additionally, we explain that we cannot use tests that do not measure the central 30 degrees of the visual field, such as the Humphrey 24–2 test, to determine if your impairment meets or medically equals final listing 2.03B. The criterion we use in final listing 2.03B adopts the recommendation in the NRC report for determining that your visual field loss is disabling. That recommendation was based on the use of a test measuring the central 30 degrees of the visual field.

In final 2.00A6a(vi), we explain that we measure the extent of visual field loss by determining the portion of the visual field in which you can see a white III4e stimulus. This stimulus specification is the same as the specification in the second paragraph of prior 2.00A3.

In final 2.00A6a(vii), we explain that we need to determine the decibel (dB) level that corresponds to a 4e intensity for the particular perimeter being used. We further explain that we will then use the dB printout to determine which points would be seen at the 4e intensity level. We also give an example that explains that, for tests performed on Humphrey Field Analyzers, any point seen at 10 dB or higher is a point that would be seen with a 4e stimulus.

In final 2.00A6a(viii), we explain that we can also use visual field measurements obtained using kinetic perimetry, such as the Humphrey ''SSA Test Kinetic'' (a kind of automated kinetic perimetry) or Goldmann perimetry (a kind of manual kinetic perimetry). In response to a public comment, we have clarified this section to make it clear that this type of testing may be used instead of automated static threshold perimetry.

We contracted with West Virginia University to conduct research to determine whether the Humphrey ''SSA Test Kinetic'' is comparable to Goldmann perimetry. This research, which was completed in April 2000, showed that the Humphrey ''SSA Test Kinetic'' is comparable to Goldmann perimetry, except that the Humphrey ''SSA Test Kinetic'' does not identify scotomata, that is, non-seeing areas in the visual field surrounded by seeing areas. Therefore, in the NPRM, we proposed that if we needed additional information because your visual disorder had progressed to the point where it was likely to result in a significant limitation in the central visual field, such as a scotoma, we would supplement the automated kinetic perimetry with the results of a Humphrey 30–2 or comparable test. There were public comments questioning this guidance. In response to those comments, we have clarified this section to state that we will not use the results of automated kinetic testing to assess your visual field loss in this situation. Instead, we will assess your visual field loss with automated static threshold perimetry or with manual kinetic perimetry.

In final 2.00A6a(ix), we explain that we will not use the results of visual field screening tests, such as confrontation tests, tangent screen tests, or automated static screening tests, to determine that your impairment meets or medically equals a listing or to evaluate your residual functional capacity. We also explain that we can consider normal results from visual field screening tests to determine whether your visual disorder is severe when these results are consistent with the other evidence in your case record. We also list some circumstances under which we will not consider normal test results to be consistent with the other evidence in the file.

Consistent with our removal of the guidance on aphakia, we are removing the stimulus specifications used to test individuals with aphakia contained in the first two paragraphs of prior 2.00A3.

In final 2.00A6b, we revise the guidance in the first paragraph of prior 2.00A3 on the use of corrective lenses during visual field testing. We explain that eyeglasses must not be worn during the visual field examination because they limit your field of vision, but contact lenses or perimetric lenses may be used in order to obtain the most accurate visual field measurements. We also provide that, for this single purpose, you do not need to demonstrate that you have the ability to use the contact or perimetric lenses on a sustained basis.

2.00A7—How do we calculate visual efficiency?

In this section, we expand the guidance in prior 2.00A5, ''Visual efficiency,'' by explaining how we calculate visual acuity efficiency, visual field efficiency, and visual efficiency. The guidance in 2.00A7b is based on the first sentence of paragraph 2 of the explanatory text following Table 2 in the prior rules. We are deleting that sentence from the explanation of Table 2 because we are moving it here. The guidance in 2.00A7c is based on prior 2.00A5 and the parenthetical statement at the end of prior listing 2.04, which we are deleting because it is redundant. In response to a public comment, we are also adding an example to 2.00A7c to illustrate how visual efficiency is calculated.

2.00A8—How do we evaluate specific visual problems?

This section replaces prior 2.00A6, ''Special situations.'' In this section, we are adding guidance for evaluating specific visual problems. The following is a discussion of the section.

2.00A8a—Statutory blindness

In this section, we codify a longstanding procedure. The most commonly used visual acuity test charts are charts based on Snellen methodology. These charts usually do not have lines that measure visual acuity between 20/100 and 20/200. Therefore, if you are unable to read any of the letters on the 20/100 line on a test chart based on Snellen methodology, your visual acuity will be assessed as 20/200 or less.

There are newer test charts (not yet widely used, but comparable to charts based on Snellen methodology) that do have lines to measure visual acuity between 20/100 and 20/200. Based on medical literature, we know that if your visual acuity is between 20/100 and 20/200 as measured on those newer test charts, it would be 20/200 if it were measured using the more common chart based on Snellen methodology. We explain in this section that if your visual acuity is measured using one of these newer charts and you cannot read any of the letters on the 20/100 line, we will determine that you have statutory blindness based on a visual acuity of 20/200 or less. We also provide that, regardless of the type of test chart used, you do not have statutory blindness if you can read at least one letter on the 20/100 line. In response to a public comment, we have added examples of how we evaluate visual acuity measurements between 20/100 and 20/200.

2.00A8b—Blepharospasm

In the NPRM, we described the disorder and explained that we must consider how the involuntary blinking that characterizes it can affect your ability to maintain the measured visual acuities and visual fields over time. In response to a public comment, we have revised this section to refer to your ability to maintain visual functioning over time instead of your ability to maintain the measured visual acuities and visual fields over time. Also, as we reviewed this section to respond to the public comment, we realized that ''closure of the eyelids'' is a better descriptor of how the disease manifests than ''eye blinking,'' and have made this nonsubstantive change to more clearly describe the disorder. We have also made other nonsubstantive editorial changes for clarity.

2.00A8c—Scotoma

We define the term ''scotoma'' as a non-seeing area in the visual field surrounded by a seeing area. We also explain that when we measure your visual field, we will subtract the length of any scotoma, other than the normal blind spot, from the overall length of any diameter on which it falls.

2.00C—How do we evaluate impairments that do not meet one of the special senses and speech listings?

We are revising the guidance in the second paragraph of prior 2.00A6 by stating our basic adjudicative principle that if the impairment(s) does not meet or medically equal the criteria of a listing in this body system, we must consider whether it meets or medically equals the criteria of a listing in another body system. If not, we must continue the sequential evaluation process (see §§ 404.1520 and 416.920) to determine whether you are disabled or continue to be disabled (see §§ 404.1594, 416.994 and 416.994a). This new section applies to all the impairments in this body system, not just visual disorders.

How are we changing the criteria in the special senses and speech listings for adults?

2.01 Category of Impairments, Special Senses and Speech

We are removing the reservation for listing 2.05 because it is no longer needed. We are also removing prior listing 2.06, ''Total bilateral ophthalmoplegia,'' for the reasons cited in ''2.00 Special Senses and Speech'' above.

Listing 2.02—Loss of visual acuity

This final listing corresponds to prior listing 2.02, ''Impairment of visual acuity.'' We are changing the heading to be consistent with other language in these final rules.

Listing 2.03—Contraction of the visual field in the better eye

This final listing corresponds to prior listing 2.03, ''Contraction of peripheral visual fields in the better eye.'' We are removing prior listing 2.03A, which provided that an individual's visual field loss was of listing-level severity when the field was contracted to 10 degrees or less from the point of fixation. Prior listing 2.03B provided that an individual's visual field loss was of listing-level severity if that loss resulted in the widest diameter of the field subtending an angle no greater than 20 degrees. Any visual field loss that satisfied the criterion in prior listing 2.03A also satisfied the criterion in prior listing 2.03B. Therefore, prior listing 2.03A was unnecessary.

We are redesignating prior listing 2.03B as final listing 2.03A. In response to a public comment, we have added the phrase ''around the point of fixation'' to

make it clear that when we measure the widest diameter, the diameter must go through the point of fixation.

The NRC report contained a recommendation that a mean deviation (MD) of −22 or worse on an automated static threshold perimetry test measuring the central 30 degrees of the visual field ''would serve as a reasonable criterion for disability determination.'' We agree with the NRC and are adding this criterion as final listing 2.03B.

Final listing 2.03C corresponds to prior listing 2.03C. We are clarifying the criterion by indicating that a determination of visual field efficiency must be based on kinetic perimetry.

Listing 2.04—Loss of visual efficiency

This final listing corresponds to prior listing 2.04, ''Loss of visual efficiency.'' As already explained, we are removing the parenthetical statement at the end of the prior listing because it was redundant of information in proposed 2.00A7c. However, we are adding a reference to that section of the final introductory text as a reminder of where this guidance is contained.

Table 1—Percentage of Visual Acuity Efficiency Corresponding to the Best-Corrected Visual Acuity Measurement for Distance in the Better Eye

To be consistent with our removal of the introductory text on aphakia, we are removing the columns and guidance addressing aphakia from prior Table 1. We are also removing the entries for visual acuities worse than 20/100 for the reasons we gave under the explanation of final 2.00A8a. In response to a public comment, we are removing the entries for visual acuities of 20/32 and 20/64 and adding entries for visual acuities of 20/30, 20/60, and 20/70.

Table 2—Charts of Visual Fields

We are removing the first sentence of prior paragraph 2 in the explanation of how to use Table 2. That sentence provided instructions for calculating the percent of visual field efficiency, and we moved it to final 2.00A7b. We are also making nonsubstantive editorial changes for clarity.

How are we changing the introductory text to the special senses and speech listings for children?

102.00 Special Senses and Speech

Except for minor editorial changes, we have repeated much of the introductory text of final 2.00A in the introductory text to final 102.00A. This is because the same basic rules for establishing and evaluating the existence and severity of visual disorders in adults also apply to children. Because we have already described these provisions under the explanation of final 2.00A, the following discussions describe only those provisions that are unique to the childhood rules or that require further explanation specific to evaluating disability in children.

We are removing the second paragraph of prior 102.00A, ''Visual impairments in children.'' This paragraph indicated that the accommodative reflex is generally not present in children under 6 months of age (or, for a premature child, until 6 months of age plus the number of months the child is premature). It also provided that the absence of this reflex should be considered indicative of a visual impairment only in children above this age. We included this guidance in the prior rules to explain that it was not appropriate to use the criterion in prior listing 102.02B1 until the child reached the required age. However, in these final listings, we incorporated prior listing 102.02B1 into the more general category of abnormal anatomical findings evaluated under final listing 102.02B2. As the lack of the accommodative reflex is not considered an abnormal anatomical finding in very young children, its absence would not satisfy the final listing criterion. Therefore, we no longer need this explanation.

102.00A1—What are visual disorders?

In this section, we expand the guidance provided for adults in final 2.00A1 to indicate that in addition to limiting your ability to distinguish detail, read, and do fine work, a loss of visual acuity may affect your ability to perform other age-appropriate activities. We added this supplemental guidance to reflect the way we evaluate disability claims of children.

102.00A2—How do we define statutory blindness?

In this section, we repeat the guidance in final 2.00A2, but refer to the childhood listings that show statutory blindness.

102.00A4—What evidence do we need to evaluate visual disorders, including those that result in statutory blindness under title II?

In this section, which is the same as final 2.00A4, we replace and expand the third paragraph of prior 102.00A.

102.00A5—How do we measure best-corrected visual acuity?

In this section, we revise the guidance in the first paragraph of prior 102.00A. In final 102.00A5a, we discuss comparable visual acuity testing for children who are unable to participate in testing using Snellen methodology, for example, because they are too young, and add guidance for how we evaluate children who are unable to participate in testing using Snellen methodology or other comparable testing. In response to a public comment, we have revised proposed 102.00A5b by adding examples of abnormal anatomical findings and abnormal neuroimaging of the cerebral cortex that would indicate a visual acuity of 20/200 or less.

102.00A6—How do we measure visual fields?

In this final section, we repeat the guidance in final 2.00A6 but in 102.00A6a(ix) refer to the way we evaluate disability in children.

102.00C—How do we evaluate impairments that do not meet one of the special senses and speech listings?

In this section, we repeat the guidance in final 2.00C, but include the definition of disability for children who are filing for or are receiving SSI payments.

How are we proposing to change the criteria in the special senses and speech listings for children?

102.01 Category of Impairments, Special Senses and Speech

We are adding new listings 102.03, ''Contraction of the visual field in the better eye,'' and 102.04, ''Loss of visual efficiency,'' because they apply to children as well as adults. Due to the addition of these listings, we are also adding Table 1, ''Percentage of Visual Acuity Efficiency Corresponding to the Best-Corrected Visual Acuity Measurements for Distance in the Better Eye,'' and Table 2, ''Charts of Visual Fields.''

These new listings and tables are identical to the corresponding adult listings and tables. Previously, we used prior listings 2.03 and 2.04 (and their corresponding tables) to evaluate children with visual field and visual efficiency impairments. With final listings 102.03 and 102.04 we will no longer need to refer to the listings in part A when we evaluate these impairments in children.

We are also making nonsubstantive editorial changes to the heading of this section to be consistent with the heading of 2.01.

Listing 102.02—Loss of visual acuity

This final listing corresponds to prior listing 102.02, ''Impairments of visual acuity.'' We are not making any changes to prior listing 102.02A.

We used prior listing 102.02B to evaluate loss of visual acuity in children below 3 years of age at the time of adjudication. We are removing the age criterion and instead will use final listing 102.02B to evaluate loss of visual acuity in any child who is unable to participate in testing using Snellen methodology or other comparable visual acuity testing and who has clinical findings that fixation and visual-following behavior are absent in the better eye.

The criteria in prior listing 102.02B were all examples of abnormal anatomical findings observable during a clinical eye examination. When present in the better eye, these abnormal anatomical findings would be expected to result in the absence of fixation and visual-following behavior, and would indicate a visual acuity of 20/200 or less. Rather than list each type of abnormal anatomical finding, we combined the prior criteria into a general category of abnormal anatomical findings in final listing 102.02B1. We used the phrase ''a visual acuity of 20/200 or worse'' in proposed listing 102.02B1. We have revised this phrase in final listing 102.02B1 to read ''a visual acuity of 20/200 or less'' to be consistent with the statutory language that defines blindness.

Final listings 102.02B2, 102.02B3, and 102.02B4 add criteria for impairments that generally are not observable during a clinical eye examination, but are diagnosed based on abnormal neuroimaging, an abnormal electroretinogram, or an absent response to VER testing. We did not propose the criterion in final listing 102.02B4, an absent response to VER testing in the better eye, in the NPRM. This criterion was added in response to a public comment.

Public Comments

In the NPRM we published in the **Federal Register** on August 17, 2005 (70 FR 48342), we provided the public with a 60-day comment period that ended on October 17, 2005. In addition to our notice to the public, we invited comments from national medical organizations and professionals who have expertise in the evaluation of visual disorders. As part of our outreach efforts, we also invited comments from advocacy groups and legal services organizations.

We received comments from 13 commenters. The commenters included advocacy groups, legal services organizations, State agencies that make disability determinations for us, medical organizations, ophthalmologists, and other individuals. We carefully considered all of the comments. Because some of the comments were long, we have condensed, summarized, and paraphrased them. We believe we have presented the commenters' views accurately, and have responded to all of the significant issues raised by the commenters that were within the scope of these rules.

Statutory Blindness

Comment: Two commenters suggested that we use the term ''blindness'' in the listings only to describe total vision loss or near-total vision loss; that is, situations in which the individual must rely primarily on vision substitution skills. They indicated that it is more appropriate to use the ranges of ''mild,'' ''moderate,'' ''severe,'' and ''profound'' vision loss as defined in the American Medical Association's *Guides to the Evaluation of Permanent Impairment,* Fifth Edition (hereinafter, the ''AMA Guides'') for those individuals who have residual vision; that is, those that can still benefit from vision enhancement aids. As defined in the AMA Guides, the term ''severe vision loss'' reflects the statutory standard.

Response: We were not able to adopt this comment because we must follow the language of the Act. The definition of ''blindness'' in sections 216(i)(1) and 1614(a)(2) of the Act is:

> [C]entral visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered * * * as having a central visual acuity of 20/200 or less.

Comment: One commenter noted that the definition of blindness in proposed 2.00A2 and 102.00A2 contained the phrase ''with the use of a correcting lens.'' The commenter believed that this language can be taken to mean that any corrective lens will fulfill the requirement and recommended that the language be changed to read ''visual acuity of 20/200 or less in the better eye with the use of best possible corrective lens.''

Response: We partially adopted this comment. We have not deleted the phrase ''with the use of a correcting lens'' from the definition of blindness in final 2.00A2 and 102.00A2 as those sections reflect the statutory definition of blindness and the phrase is part of the statutory language. However, we have added a reference to sections 216(i)(1) and 1614(a)(2) of the Act in final sections 2.00A2 and 102.00A2 of the rules to make it clearer that we are providing the statutory definition. We also added guidance indicating that when we determine whether the statutory definition of blindness based on visual acuity is met, we use the best-corrected visual acuity for distance in the better eye.

Comment: One commenter suggested that we expand the definition of statutory blindness to include the criteria in proposed listings 2.03B and C and proposed listing 2.04. The commenter indicated that we can interpret the statute, and that the suggestion would be a reasonable interpretation.

Response: We did not adopt this comment. Although we agree that we have the authority to interpret the statute when necessary, the definition of blindness in the Act is clear and explicit, and there is nothing in the legislative history to suggest that Congress intended us to apply any standard other than the definitions in the statute, which are reflected in final listings 2.02 and 2.03A. (S. Rep. No. 90–744, at 7, 46–47 (1967), as reprinted in 1967 U.S.C.C.A.N. 2834, 2842, 2886–2887.)

Comment: We received several comments on our method for evaluating visual acuity measurements between 20/100 and 20/200 (proposed 2.00A8a and 102.00A8a). One commenter said that finding statutory blindness based on a visual acuity of 20/200 is a more liberal standard than that used in any other country, and that our proposal to treat visual acuity measurements between 20/100 and 20/200 as visual acuity of 20/200 would move us even further out of the global mainstream. This commenter stated we should instead use visual acuity that is worse than 20/160 as our standard, and indicated that when the clinician does not use a chart containing visual acuity measurements between 20/100 and 20/200, the clinician should measure best-corrected visual acuity from a distance of 10 feet instead of the usual 20 feet. Other commenters, including the American Optometric Association, indicated that our approach to interpreting visual acuity measurements between 20/100 and 20/200 is sensible because it does not adversely affect people who had previously been classified as disabled. Another commenter wondered whether an individual who can see only one letter on the 20/100 line of a visual acuity chart has functionally better vision than someone with best-corrected visual acuity of 20/200. However, this commenter did acknowledge that a line must be drawn somewhere.

Response: We did not adopt the recommendations to change our policy on evaluating visual acuity measurements between 20/100 and 20/

200. As we indicated in our explanation of proposed 2.00A8a in the NPRM (70 FR at 48346) and in our explanation of final 2.00A8a earlier in this preamble, the most commonly used visual acuity test charts are based on Snellen methodology and usually do not have lines that measure visual acuity between 20/100 and 20/200. While there are newer test charts that do provide such measurements, such as the Early Treatment Diabetic Retinopathy Study (ETDRS) chart, these charts are not widely used in clinical practice. Also, we know that if an individual's visual acuity is between 20/100 and 20/200 as measured on those newer charts, it would be 20/200 if measured using the most commonly used charts. Rather than evaluating the severity of a visual disorder based on the different types of charts used to test an individual's visual acuity, we have determined that it is more appropriate to assess visual acuity for all individuals using the same methodology—the one incorporated in the most commonly used test charts and the one contemplated in the statutory definition of blindness.

Moreover, we do not agree that requiring testing at 10 feet, instead of 20 feet, is a feasible alternative. The testing of visual acuity requires a specific optics setup in the clinician's office, and in most offices the optics setup is designed to obtain visual acuity measurements at a 20-foot working distance; that is, even when the testing lane is not 20 feet long, the optics setup is designed to give results comparable to those obtained at 20 feet. We believe that requiring best-corrected visual acuity measurements at a 10-foot working distance would greatly restrict our ability to use evidence provided by the individual's treating source(s) because we do not believe that clinicians would reconfigure the optics in their offices to obtain measurements that are not widely used in the medical community.

Also, we do not believe we should expand the standards for statutory blindness to encompass individuals who can read some, but not all, of the letters on the 20/100 line of the visual acuity chart. Such a standard would be more lenient than the 20/200 definition for blindness contained in the Act, even when measured on more commonly used visual acuity test charts. As we indicated above, there is nothing in the language of the statute or the legislative history to suggest that Congress intended that we apply any standard other than the strict definitions in the statute.

Comment: One commenter, who believed that we were expanding our definition of statutory blindness by providing that individuals who have visual acuity between 20/100 and 20/200 would meet the definition of statutory blindness, indicated that it was not obvious that the changes we proposed would have no cost. The commenter recommended that we do a field study to ascertain the fiscal impact of the proposed rules.

Response: As we indicated in our explanation of proposed 2.00A8a in the NPRM (70 FR at 48346) and in our explanation of final 2.00A8a earlier in this preamble, we are codifying in our regulations our longstanding procedure for evaluating visual acuity measurements between 20/100 and 20/200. We have used this procedure since 1991. Therefore, the proposed rules did not, and these final rules do not, change how we evaluate such clinical findings. We do not expect there will be any impact on program or administrative costs, and we do not agree that a field study is needed.

Comment: One commenter indicated that our policy on evaluating visual acuity measurements between 20/100 and 20/200 needed to be more clearly discussed and suggested that we add examples.

Response: We partially adopted this comment by adding examples in final 2.00A8a and 102.00A8a to illustrate how we use visual acuity measurements between 20/100 and 20/200 to determine whether an individual has statutory blindness.

Comment: Several commenters questioned the differences between the eligibility requirements for benefits based on blindness under title XVI and benefits based on disability under title II and title XVI. One commenter noted that individuals age 18 or older have to show an inability to do substantial gainful activity (SGA) to receive disability benefits, but that the inability to do SGA is not required for benefits based on blindness under title XVI. Three commenters noted that it is not necessary to establish the cause of the blindness in order to receive benefits based on blindness under title XVI, but it is necessary to establish the cause of any visual loss in order to receive disability benefits under either title XVI or title II, including disability benefits based on blindness under title II. One of these commenters indicated that these differences, as well as the fact that there is no duration requirement for benefits based on blindness under title XVI while there is such a requirement under title II, penalize individuals who receive title II disability benefits based on blindness. This commenter also recommended that if the title XVI eligibility requirements are statutory and cannot be changed, we should apply them when we determine whether individuals are disabled based on blindness under title II. Another commenter indicated that having different eligibility criteria could be confusing to our adjudicators.

Response: As we indicated in our explanation of proposed 2.00A3 in the NPRM (70 FR at 48345) and in our explanation of final 2.00A3 earlier in this preamble, these rules are required by the Act. ''Blindness'' and ''disability'' are separate categories under title XVI, whereas under title II blindness is considered a type of ''disability.'' The statutory requirements for eligibility based on blindness under title XVI are different from the statutory requirements for eligibility based on disability under title II and title XVI. As a matter of law, we cannot apply the title XVI eligibility requirements for statutory blindness to title II claims for disability.

We do not believe that our adjudicators will be confused by the different eligibility criteria in these final rules because we have been following these different rules for adjudicating blindness under title II and title XVI since the SSI program began in 1974. Therefore, our adjudicators have long been aware of these differences.

Visual Acuity

Comment: One commenter noted that there are some visual acuity tests used in low vision clinics that use a testing distance of 10 feet. The commenter suggested that the regulation explain how to interpret these results.

Response: In response to this comment, we expanded our guidance in proposed 2.00A5b(ii) and 102.00A5b(ii) to address this issue.

Comment: One commenter suggested that we revise proposed 2.00A5b(i) and 102.00A5b(i) to add ''automated refraction acuity'' as an example of a type of visual acuity testing that cannot be used to determine best-corrected visual acuity.

Response: We adopted this comment.

Comment: Two commenters noted that while proposed 2.00A5b(i) and 102.00A5b(i) clarified that VER testing cannot be used to measure best-corrected visual acuity, the proposed rules did not describe how VER testing should be used. The commenters indicated that VER testing can be useful in many situations, such as ascertaining whether a non-verbal individual is able to see, diagnosing cortical visual disorders, and evaluating cases in which malingering is suspected. One commenter asked how we evaluate

cases of young children in which neuroimaging results are not obtainable, but in which the treating source has diagnosed a cortical visual disorder, there is an absent response to VER testing, and fixation and following behavior are absent.

Response: We agree with the commenters that when there is an absent response to VER testing in an eye, we can use that result to determine that the visual acuity is 20/200 or less in that eye, and we are adding this guidance to proposed 2.00A5b and 102.00A5b. We are also revising proposed 2.00A4b and 102.00A4b to indicate that we will request a copy of VER testing results if this testing was performed to help diagnose a cortical visual disorder. Lastly, we are adding an absent response to VER testing as a criterion in final listing 102.02B.

We also agree that VER testing has other uses in clinical practice. However, VER testing is one tool among many that clinicians use to assess the degree of visual loss, and it is beyond the scope of these listings to explain how tools such as VER testing are used by clinicians in making their assessments.

Comment: One commenter noted that proposed 2.05A and 102.05A provided that we will use visual acuity testing that was carried out using Snellen methodology or any other testing methodology that is comparable to Snellen methodology. The commenter indicated that there is no generally agreed on definition of Snellen methodology, and suggested we use ''letter chart testing'' instead of ''Snellen methodology.''

Response: We did not adopt the comment. The term ''Snellen methodology'' is well recognized by the medical community as meaning a chart on which there is one large letter for 20/200 and below it rows of letters in progressively smaller sizes that reflect the distance at which a normal eye would be able to see the letters in that row.

Measuring Visual Acuity in Children

Comment: One commenter noted that proposed listing 102.02A requires best-corrected visual acuity at distance. The commenter also noted that paragraph 102.00A5a(iii) provides that if a child is unable to participate in visual acuity testing, fixation and following behavior will be considered. The commenter indicated that some children retain the ability to fix and follow at short distances, such as three feet, but not at far distances. The commenter asked how we assess visual acuity for these individuals if neuroimaging is not available.

Response: A child has statutory blindness based on visual acuity loss if his or her visual acuity is 20/200 or less in the better eye with the use of a correcting lens. For children who can participate in visual acuity testing, we determine whether the child has statutory blindness by assessing the child's best-corrected visual acuity for distance in the better eye.

However, not all children can participate in visual acuity testing. For these children, we developed alternative criteria in final listing 102.02B for determining if their visual acuity loss has resulted in statutory blindness. One of the requirements of that listing is that the visual disorder results in the absence of fixation and visual-following behavior. The listing contemplates that this behavior will be assessed at short distances; that is, within a few feet, because that is how this behavior is assessed in clinical practice. If a child can use the better eye to fixate and visually follow at short distances, his or her impairment does not meet the listing. We will then evaluate the visual disorder to determine if it medically equals a listing or functionally equals the listings.

Comment: One commenter noted that proposed listing 102.02B required clinical findings that fixation and visual-following behavior be absent in the better eye and indicated that the phrase ''in the better eye'' is unnecessary. The commenter remarked that if the better eye cannot fix and follow, the lesser eye certainly cannot.

Response: We did not delete the phrase ''in the better eye'' from final listing 102.02B because we believe it is necessary to the meaning of the rule. If we did not have it, the listing could be met if a child could not fixate and visually follow in the lesser eye but could in the better eye.

Comment: One commenter noted that proposed 102.00A5b(i) provided that visual acuity measurements obtained with a specialized lens can be used only if the child has demonstrated the ability to use the lens on a sustained basis. It also provided that telescopic lenses cannot be used because they significantly reduce the visual fields. The commenter wanted to know how visual acuity is assessed if the child is too young to wear specialized lenses on a sustained basis and telescopic lenses cannot be used.

Response: If the child can participate in visual acuity testing, his or her visual acuity will be assessed through refraction, and we will use the best-corrected visual acuity for distance that the child will have with regular glasses. If the child cannot participate in visual acuity testing, we will assess his or her ability with the better eye to fixate and visually follow. If fixation and visual following are absent, we will look at anatomical findings, or the results of neuroimaging, electroretinography, or VER testing, if any of these have been done, to determine if they are consistent with a finding of visual acuity of 20/200 or less. If they are not consistent with such a finding, we will evaluate the visual disorder to determine whether there is medical or functional equivalence.

Comment: Two commenters indicated we should expand the introductory text to provide examples of abnormal anatomical findings that would indicate a visual acuity of 20/200 or worse in the better eye. One commenter indicated the examples could include bilateral optic atrophy, bilateral optic pallor with specific cup-to-disc size detailed, findings of bilateral congenital cataracts, or presence of Stage III or worse retinopathy of prematurity despite surgical intervention. One of the commenters also asked for examples of abnormal neuroimaging of the cerebral cortex that would indicate a visual acuity of 20/200 or worse in the better eye.

Response: In response to these comments we added final 102.00A5b(iii) to provide examples of abnormal anatomical findings and abnormal neuroimaging documenting damage to the cerebral cortex that would indicate best-corrected visual acuity of 20/200 or less. We did not include bilateral optic pallor with specific cup-to-disc size detailed or findings of bilateral congenital cataracts as examples of abnormal anatomical findings that would indicate a visual acuity of 20/200 or less in the better eye because we do not believe that these findings are always indicative of that level of visual acuity loss.

Visual Fields

Comment: One commenter objected to several of our requirements for acceptable perimeters in proposed 2.00A6a(ii) and 102.00A6a(ii) which can be used to perform automated static threshold testing. The commenter believed that the requirements seemed to be dictated more by a desire to promote the Humphrey Field Analyzer than by the requirements of disability evaluation. The commenter stated that our requirements that the perimeter have an internal normative database, a statistical analysis package, and demonstrate the ability to correctly detect visual field loss and correctly identify normal visual fields were unnecessary. The commenter also

indicated that these requirements would not permit the use of Goldmann perimeters.

Response: As we indicated in our explanation of proposed 2.00A6a in the NPRM (70 FR at 48345) and in our explanation of final 2.00A6a earlier in this preamble, we adopted the criteria recommended in the NRC report as our requirements for perimeters used to perform automated static threshold perimetry. We agree with the NRC that all the criteria should be satisfied.

In final 2.00A6a(ii) and 102.00A6a(ii) we cite the Humphrey Field Analyzer as an example of an acceptable perimeter. We cite only the Humphrey Field Analyzer because it is not our intention to list in these rules every acceptable automated perimeter, and the Humphrey Field Analyzer is the most widely used automated perimeter in the United States.

Goldmann perimeters are manual kinetic perimeters. The requirements listed in final 2.00A6a(ii) and 102.00A6a(ii) are for perimeters used to perform automated static threshold testing; therefore, they are not applicable to Goldmann perimeters. However, as we indicated in our explanation of 2.00A6a in the NPRM (70 FR at 48345) and in our explanation of final 2.00A6a earlier in this preamble, we will continue to use visual field measurements obtained with kinetic perimetry such as Goldmann perimetry.

Comment: Several commenters noted that proposed 2.00A6a(iv) and 102.00A6a(iv) appeared to conflict with proposed 2.00A6a(v) and 102.00A6a(v) and requested that we clarify this guidance. One commenter indicated that we should require a 30-degree test for all situations. Another suggested that we add a reference to listing 2.03A in proposed 2.00A6a(iv).

Response: We clarified the rules in response to the comments. Proposed 2.00A6a(iv) and 102.00A6a(iv) described the automated static threshold testing needed to determine if an individual's visual field loss resulted in statutory blindness; that is, whether the widest diameter of the visual field subtended an angle no greater than 20 degrees and thus satisfied the criterion in proposed listing 2.03A or 102.03A. Proposed 2.00A6a(v) and 102.00A6a(v) described the automated static threshold testing needed to determine if an individual's visual field loss satisfied the criterion in proposed listing 2.03B or 102.03B. The criterion in proposed listing 2.03B or 102.03B did not represent statutory blindness. Therefore, the fact that there were different documentation requirements was not a conflict. However, in response to these comments, we added a reference to final listing 2.03A in final 2.00A6a(iv) and a reference to final listing 102.03A in final 102.00A6a(iv).

We did not adopt the comment to require a 30-degree test to determine if an individual has statutory blindness based on visual field loss. If a 24-degree test shows this degree of limitation, we believe it is not necessary to obtain a 30-degree test.

Comment: One commenter questioned the NRC's recommendations for visual field testing. The commenter believed that, while visual field tests that measure the central 30 degrees of the visual field are valuable for diagnostic purposes, the NRC report failed to provide evidence that they would also be appropriate for disability evaluation; that is, for determining the consequences of a visual disorder. The commenter indicated that evaluation of reading and mobility would be better measures of visual disability. The commenter also suggested that instead of adopting the NRC recommendation, we should evaluate visual field loss using the method described in the AMA Guides, Fifth Edition.

Response: We did not adopt the comment. The NRC report recommended that we use a mean deviation of -22, determined by an automated static threshold perimetry test of the central 30 degrees of the visual field, as an indicator of disability. The NRC explained that this mean deviation corresponds to an individual having normal vision within the central 10-degree radius of the visual field and no vision outside this radius. The NRC indicated, and we agree, that this mean deviation represents extensive visual field loss, and we believe that this degree of visual field loss is of listing-level severity.

The NRC also looked at using reading and mobility as indicators of visual disability and found that use of these measures was not viable. Additionally, the NRC recommended we not use ''the visual field scoring procedures recently published by the American Medical Association (1993). The AMA guidelines are not based on empirical data, the procedures have not been validated, and their properties are largely unknown.''

Comment: One commenter noted that proposed 2.00A6a(v) and 102.00A6a(v) indicated that we need results from a Humphrey Field Analyzer but also provided that we could use comparable results from other acceptable perimeters. The commenter believed this language was inconsistent.

Response: In response to this comment, we revised proposed 2.00A6a(v) and 102.00A6a(v) to indicate that, while the criterion in final listings 2.03B and102.03B is based on the use of a test performed on a Humphrey Field Analyzer, we can also use comparable results from other acceptable perimeters.

Comment: One commenter noted that our explanation of proposed 2.00A6 indicated that the NRC report recommended that disability determinations be based on visual fields obtained by automated static threshold perimeters rather than by kinetic perimeters. The commenter noted that while automated static threshold perimetry can be used to determine if the visual disorder meets listing 2.03B, it cannot be used to determine the percentage of residual field efficiency. Two commenters believed that the fact that determinations under proposed listing 2.03C required kinetic testing contradicted the statement that either automated static threshold testing or kinetic testing could be used. One of these commenters believed that the regulations could be interpreted as requiring both automated static threshold testing and kinetic testing, and that such a requirement would increase costs for SSA.

Response: As we indicated in our explanation of proposed 2.00A6 in the NPRM (70 FR at 48345) and in our explanation of final 2.00A6 earlier in this preamble, we partially adopted the NRC recommendation. We will use results of automated static threshold perimetry to determine the degree of visual field loss, but we will also continue to use comparable visual field measurements obtained with kinetic perimetry. Because we allow for different types of testing, final listings 2.03 and 102.03 provide criteria that can be used with the different types of test results. As the results of these tests are comparable, only one type of testing is needed. Therefore, in response to the second comment, we clarified proposed 2.00A6a(viii) and 102.00A6a(viii) to state that kinetic perimetry may be used instead of automated static threshold perimetry.

Comment: One commenter noted that proposed 2.00A6a(viii) and 102.00A6a(viii) indicated that automated kinetic testing may need to be supplemented with a Humphrey 30–2 or comparable test if the visual disorder has progressed to the point where it is likely to result in a significant scotoma. The commenter asked if this meant that we should merge the test result obtained from the SSA test kinetic with the results of the automated static threshold testing when there is a significant scotoma present

and if there is a methodology that we want our adjudicators to follow for combining these tests. Another commenter suggested we revise proposed 2.00A6(viii) and 102.00A6a(viii) to indicate that automated kinetic testing needs to be supplemented when there is the likelihood of a significant limitation in the central or mid-peripheral visual field. The commenter believed we should add a reference to the mid-peripheral field as this is important in conditions such as retinitis pigmentosa, but also noted that such a limitation might be missed by a Humphrey 30–2 or comparable test.

Response: In response to these comments, we revised the guidance in proposed 2.00A6a(viii) and 102.00A6a(viii) to indicate that we will not use automated kinetic perimetry to assess visual field loss if the visual disorder has progressed to the point where it is likely to result in a significant limitation in the central visual field. In these situations, we will use automated static threshold testing or manual kinetic perimetry to evaluate the visual field loss.

We did not adopt the comment that asked us to add a reference to the mid-peripheral field. As we indicate below, we believe that measuring the central 30 degrees of the visual field will provide sufficient information to determine disability or blindness.

Comment: One commenter noted that the Goldmann and Humphrey kinetic tests, which measure to the periphery, used in conjunction with the 30–2 would give a better picture of the visual field than the 30–2 alone.

Response: While we agree with the commenter, we believe that a visual field test that measures the central 30 degrees of the visual field will provide sufficient information to determine blindness or disability.

Comment: One commenter suggested that we revise the language in proposed 2.00A6a(ix) and 102.00A6a(ix) to state that we can use normal test results to determine that the visual field loss is not severe.

Response: In response to this comment, we have clarified proposed 2.00A6a(ix) and 102.00A6a(ix) to state that we can consider normal results from visual field screening tests to determine whether the visual disorder is severe.

Comment: One commenter suggested we add the words ''around fixation'' to proposed listing 2.03A, the listing for contraction of the visual field in the better eye, with the widest diameter subtending an angle no greater than 20 degrees.

Response: We have adopted this comment by adding the phrase ''around the point of fixation'' in final listings 2.03A and 102.03A. This will clarify that, when we measure the widest diameter, the diameter must go through the point of fixation.

Comment: One commenter suggested we add a chart showing how the length of a scotoma is subtracted from the overall length of any diameter in which it falls.

Response: We did not adopt this comment. However, we plan to issue a Social Security Ruling to explain the procedural aspects of measuring the visual field, and we will explain how to deduct the length of a scotoma in that ruling.

Comment: Two commenters noted that proposed 2.00A6a(i) cited macular edema as an example of a disorder that could result in visual field loss in adults but this disorder was not cited in proposed 102.00A6a(i). One of these commenters suggested that macular edema not be included as an example of a disorder that could result in visual field loss as it does not result in more than minimal field loss. The other commenter indicated that macular edema should be added to proposed 102.00A6a(i) as the condition does occur in children.

Response: We agree that macular edema generally does not result in significant visual field loss; therefore, we removed the example in response to the comment that asked us to do that. Final 2.00A6a(i) and 102.00A6a(i) are now the same in this regard.

Visual Efficiency

Comment: Two commenters recommended that we change the way we calculate visual efficiency to use the functional vision score (FVS) as described in the AMA Guides.

Response: We did not adopt this comment. The FVS is based on an assessment of visual acuity and visual fields. The visual acuity assessment requires the use of an ETDRS-type chart which is the preferred visual acuity chart for research purposes, but is not commonly used in clinical practice. Additionally, this visual acuity assessment requires a measurement of binocular visual acuity, and this measurement usually is not performed as part of a routine eye examination.

Also, as we indicated above, the NRC report recommended that we not use the visual field scoring procedures published by the AMA.

Comment: Three commenters asked that we add an example to proposed 2.00A7 and 102.00A7 to clarify how we compute visual efficiency. One of these commenters also suggested that we add the phrase ''and expressing the product in decimals converted to a percentage'' to the end of proposed 2.00A7c and 102.00A7c.

Response: In response to this comment, we added an example of a visual efficiency calculation and the phrase ''and converting the decimal to a percentage'' to proposed 2.00A7c and 102.00A7c.

Comment: Two commenters recommended that we revise proposed Table 1 to show visual acuity efficiency ratings for the visual acuities of 20/30, 20/60, and 20/70 instead of the visual acuities of 20/32 and 20/64. One of these commenters also suggested we add ''aphakic with a contact lens'' to the heading of the last column in Table 1.

Response: In response to this comment we revised proposed Table 1 to show visual acuity efficiency for the visual acuities of 20/30, 20/60, and 20/70 (and their metric equivalents) instead of the visual acuities of 20/32 and 20/64. We did not adopt the second comment because we removed the heading in the last column of proposed Table 1 as these rules do not differentiate between an eye that is phakic, pseudophakic, or aphakic.

Binocular Vision

Comment: One commenter suggested we use binocular vision instead of vision in the better eye when we evaluate blindness or disability.

Response: We did not adopt this comment. The Act specifies that we use the vision in the better eye, that is, monocular vision, to determine blindness. Additionally, binocular visual acuity is often not measured during a routine eye examination. Lastly, there are no commonly used procedures to measure binocular visual fields directly or to derive a binocular visual field from monocular visual fields.

Specific Visual Disorders

Comment: One commenter questioned the removal of the guidance in prior 2.00A4, ''Muscle function.'' The commenter indicated that, although total bilateral ophthalmoplegia is very rare, paralysis of individual eye muscles or groups of eye muscles may cause a totally debilitating condition. The commenter noted that this type of impairment was not addressed in the proposed rules. Another commenter suggested that we add guidance on how to evaluate nystagmus.

Response: We did not adopt these comments as eye muscle disorders usually do not result in a listing-level loss of visual acuity or visual fields. As

we indicated in our explanation of the proposed changes to 2.00 in the NPRM (70 FR at 48344) and in our explanation of the final changes to 2.00 earlier in this preamble, we will evaluate ophthalmoplegia and other eye muscle disorders (such as nystagmus) by assessing the impact of the disorder on visual efficiency or on the individual's visual functioning.

Comment: Two commenters asked that we provide additional guidance on how to evaluate the effect of the involuntary blinking involved in blepharospasm on the ability to maintain measured visual acuity and visual fields over time. One of these commenters also suggested that we change the phrase ''maintain measured visual acuities and visual fields over time'' in the last sentence of section 2.00A8b to ''maintain function over time'' as blepharospasm does not cause a decrease in measured acuities or fields.

Response: In response to this comment, we revised proposed 2.00A8b and 102.00A8b to refer to visual functioning instead of visual acuities and visual fields. Additionally, as we reviewed this section to respond to this comment, we realized that we should have referred to ''closure of your eyelids'' instead of ''eye blinking,'' and have made this and other nonsubstantive editorial changes for clarity. We have not provided additional guidance on how to evaluate the effect of the involuntary eyelid closure. This assessment requires medical judgment and must be made on a case-by-case basis.

Comment: Two commenters expressed concern that deleting our prior guidance for evaluating aphakia will disadvantage those few individuals who are unable to obtain or use synthetic intraocular lenses or contact lenses.

Response: As we discussed in our explanation of the proposed changes to 2.00 in the NPRM (70 FR at 48344) and in our explanation of the final changes to 2.00 earlier in this preamble, we deleted the guidance on aphakia as this condition is effectively treated with synthetic intraocular lenses or contact lenses. We do not agree that the very few individuals who are unable to obtain or use these treatments will be adversely affected. If an individual with aphakia does not have an impairment that meets a listing, we can consider the effects of aphakia when we determine whether the impairment medically equals a listing or when determining residual functional capacity or, in children, functional equivalence.

Comment: One commenter suggested we add guidance about pseudophakia to proposed 2.00A8 and 102.00A8.

Response: We did not adopt this comment as these final rules do not differentiate between an eye that is phakic, pseudophakic, or aphakic.

Comment: One commenter suggested that we change the phrase ''cortical blindness'' used in proposed 2.00A4b and 102.00A4b to ''cortical visual impairment.'' The commenter also provided language that describes a cortical visual impairment and suggested we add the language to proposed 2.00A8 and 102.00A8. Another commenter noted that proposed 2.00A4b cited stroke as an example of a catastrophic event that can cause cortical blindness in adults. The commenter recommended that we include the same example in proposed 102.00A4b for children.

Response: In response to these comments, we changed the phrase ''cortical blindness'' to ''cortical visual disorder'' and expanded the discussion of cortical visual disorders in proposed 2.00A4b and 102.00A4b. Our expanded discussions include stroke as an example of a cause of cortical visual disorders in children.

Comment: One commenter requested clarification of what is needed to document a catastrophic event that causes blindness. The commenter asked if mention of the specific event as part of the medical history would be sufficient, or whether copies of the actual hospitalization, operative report, or pertinent lab studies would be required.

Response: The mention of a specific event as part of a medical history would be an allegation that the event took place; it would not be documentation of the event. To document the catastrophic event, we need medical records showing the treatment for the event.

Other Comments

Comment: One commenter noted that our reference to the American Medical Association's *Guides to the Evaluation of Permanent Impairment,* Fifth Edition, cited pages 252 and 287–295. The commenter indicated that he believed we never consulted the fifth edition as the page numbers are wrong and the content is not used.

Response: We did reference the fifth edition of the AMA Guides. The reference to page 252 was an editing error. The section of the AMA Guides on impairment of visual field is on pages 287–295. Although we consulted this reference, we decided not to adopt the AMA's procedures for evaluating visual field loss for reasons we have already given.

Comment: A number of commenters suggested minor editorial changes and additions. For example, one commenter suggested we add the word ''impairments'' to the heading of this body system. Another commenter suggested we add the acronym ''VTAP'' after the word ''Humphrey'' in the last sentence of proposed 2.00A6a(iv) and 102.00A6a(iv). Another commenter suggested we change the heading of proposed 2.08 and 102.08.

Response: We did not adopt these suggestions. In some cases, we did not think they were necessary. In others, we did not think that they clarified the issues.

Comment: One commenter asked us to clarify the reporting requirements under the Paperwork Reduction Act.

Response: The Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, requires Federal Government agencies that intend to collect information from 10 or more members of the public to seek comment on such information collections prior to obtaining Office of Management and Budget approval. The purpose in seeking public comment is to reduce to the extent practicable and appropriate the burden imposed on the public. Sections 2.00A and 102.00A discuss evidentiary reports, such as reports of eye examinations that we obtain from providers of medical evidence. The evidentiary reporting requirements are covered by the PRA; therefore; we provide an opportunity for the public to comment via the PRA notice shown in the preamble to the proposed rules.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

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

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of

information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in Part A, 2.00 and Part B, 102.00 of these final rules. The OMB Control Number for this collection is 0960–0642, expiring March 31, 2008.

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

List of Subjects in 20 CFR Part 404

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

Dated: August 2, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

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

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

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

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

Appendix 1 to Subpart P of Part 404—[Amended]

■ 2. Appendix 1 to subpart P of part 404 is amended as follows:

■ a. Item 3 of the introductory text before part A of appendix 1 is amended by revising the expiration date.

■ b. Section 2.00A of part A of appendix 1 is revised.

■ c. Section 2.00C is added to part A of appendix 1.

■ d. Listing 2.02 of part A of appendix 1 is revised.

■ e. Listing 2.03 of part A of appendix 1 is revised.

■ f. Listing 2.04 of part A of appendix 1 is revised.

■ g. The reservation for listing 2.05 is removed.

■ h. Listing 2.06 of part A of appendix 1 is removed.

■ i. Tables 1 and 2 of section 2.00 of part A of appendix 1 are revised.

■ j. Section 102.00A of part B of appendix 1 is revised.

■ k. Section 102.00C is added to part B of appendix 1.

■ l. Listing 102.01 of part B of appendix 1 is revised.

■ m. Listing 102.02 of part B of appendix 1 is revised.

■ n. Listing 102.03 is added to part B of appendix 1.

■ o. Listing 102.04 is added to part B of appendix 1.

■ p. Tables 1 and 2 are added to section 102.00 of part B of appendix 1.

The revised text is set forth as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

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3. Special Senses and Speech (2.00 and 102.00): February 20, 2015.

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Part A

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2.00 SPECIAL SENSES AND SPEECH

A. *How do we evaluate visual disorders?*

1. *What are visual disorders?* Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. A loss of visual acuity limits your ability to distinguish detail, read, or do fine work. A loss of visual fields limits your ability to perceive visual stimuli in the peripheral extent of vision.

2. *How do we define statutory blindness?* Statutory blindness is blindness as defined in sections 216(i)(1) and 1614(a)(2) of the Social Security Act (the Act). The Act defines blindness as visual acuity of 20/200 or less in the better eye with the use of a correcting lens. We use your best-corrected visual acuity for distance in the better eye when we determine if this definition is met. The Act also provides that an eye that has a visual field limitation such that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered as having visual acuity of 20/200 or less. You have statutory blindness only if your visual disorder meets the criteria of 2.02 or 2.03A. You do not have statutory blindness if your visual disorder medically equals the criteria of 2.02 or 2.03A, or if it meets or medically equals 2.03B, 2.03C, or 2.04. If your visual disorder medically equals the criteria of 2.02 or 2.03A, or if it meets or medically equals 2.03B, 2.03C, or 2.04, we will find that you have a disability if your visual disorder also meets the duration requirement.

3. *What evidence do we need to establish statutory blindness under title XVI?* For title XVI, the only evidence we need to establish statutory blindness is evidence showing that your visual acuity in your better eye or your visual field in your better eye meets the criteria in 2.00A2, provided that those measurements are consistent with the other evidence in your case record. We do not need to document the cause of your blindness. Also, there is no duration requirement for statutory blindness under title XVI (see §§ 416.981 and 416.983).

4. *What evidence do we need to evaluate visual disorders, including those that result in statutory blindness under title II?*

a. To evaluate your visual disorder, we usually need a report of an eye examination that includes measurements of the best-corrected visual acuity or the extent of the visual fields, as appropriate. If there is a loss of visual acuity or visual fields, the cause of the loss must be documented. A standard eye examination will usually reveal the cause of any visual acuity loss. An eye examination can also reveal the cause of some types of visual field deficits. If the eye examination does not reveal the cause of the visual loss, we will request the information that was used to establish the presence of the visual disorder.

b. A cortical visual disorder is a disturbance of the posterior visual pathways or occipital lobes of the brain in which the visual system does not interpret what the eyes are seeing. It may result from such causes as traumatic brain injury, stroke, cardiac arrest, near drowning, a central nervous system infection such as meningitis or encephalitis, a tumor, or surgery. It can be temporary or permanent, and the amount of visual loss can vary. It is possible to have a cortical visual disorder and not have any abnormalities observed in a standard eye examination. Therefore, a diagnosis of a cortical visual disorder must be confirmed by documentation of the cause of the brain lesion. If neuroimaging or visual evoked response (VER) testing was performed, we will request a copy of the report or other medical evidence that describes the findings in the report.

c. If your visual disorder does not satisfy the criteria in 2.02, 2.03, or 2.04, we will also request a description of how your visual disorder impacts your ability to function.

5. *How do we measure best-corrected visual acuity?*

a. *Testing for visual acuity.* When we need to measure your best-corrected visual acuity, we will use visual acuity testing that was carried out using Snellen methodology or any other testing methodology that is comparable to Snellen methodology.

b. *Determining best-corrected visual acuity.* (i) Best-corrected visual acuity is the optimal visual acuity attainable with the use of a corrective lens. In some instances, this assessment may be performed using a specialized lens; for example, a contact lens. We will use the visual acuity measurements obtained with a specialized lens only if you have demonstrated the ability to use the specialized lens on a sustained basis. However, we will not use visual acuity measurements obtained with telescopic lenses because they significantly reduce the visual field. If you have an absent response to VER testing in an eye, we can determine that your best-corrected visual acuity is 20/200 or less in that eye. However, if you have a positive response to VER testing in an eye, we will not use that result to determine your best-corrected visual acuity in that eye. Additionally, we will not use the results of pinhole testing or automated refraction acuity to determine your best-corrected visual acuity.

(ii) We will use the best-corrected visual acuity for distance in your better eye when we determine whether your loss of visual acuity satisfies the criteria in 2.02. The best-corrected visual acuity for distance is usually measured by determining what you can see from 20 feet. If your visual acuity is measured for a distance other than 20 feet, we will convert it to a 20-foot measurement. For example, if your visual acuity is measured at 10 feet and is reported as 10/40, we will convert this to 20/80.

6. *How do we measure visual fields?*

a. *Testing for visual fields.*

(i) We generally need visual field testing when you have a visual disorder that could result in visual field loss, such as glaucoma, retinitis pigmentosa, or optic neuropathy, or when you display behaviors that suggest a visual field loss.

(ii) When we need to measure the extent of your visual field loss, we will use visual field measurements obtained with an automated static threshold perimetry test performed on a perimeter, like the Humphrey Field Analyzer, that satisfies all of the following requirements:

A. The perimeter must use optical projection to generate the test stimuli.

B. The perimeter must have an internal normative database for automatically comparing your performance with that of the general population.

C. The perimeter must have a statistical analysis package that is able to calculate visual field indices, particularly mean deviation.

D. The perimeter must demonstrate the ability to correctly detect visual field loss and correctly identify normal visual fields.

E. The perimeter must demonstrate good test-retest reliability.

F. The perimeter must have undergone clinical validation studies by three or more independent laboratories with results published in peer-reviewed ophthalmic journals.

(iii) The test must use a white size III Goldmann stimulus and a 31.5 apostilb (10 cd/m^2) white background. The stimuli locations must be no more than 6 degrees apart horizontally or vertically. Measurements must be reported on standard charts and include a description of the size and intensity of the test stimulus.

(iv) To determine statutory blindness based on visual field loss (2.03A), we need a test that measures the central 24 to 30 degrees of the visual field; that is, the area measuring 24 to 30 degrees from the point of fixation. Acceptable tests include the Humphrey 30–2 or 24–2 tests.

(v) The criterion in 2.03B is based on the use of a test performed on a Humphrey Field Analyzer that measures the central 30 degrees of the visual field. We can also use comparable results from other acceptable perimeters, for example, a mean defect of 22 on an acceptable Octopus test, to determine that the criterion in 2.03B is met. We cannot use tests that do not measure the central 30 degrees of the visual field, such as the Humphrey 24–2 test, to determine if your impairment meets or medically equals 2.03B.

(vi) We measure the extent of visual field loss by determining the portion of the visual field in which you can see a white III4e stimulus. The ''III'' refers to the standard Goldmann test stimulus size III, and the ''4e'' refers to the standard Goldmann intensity filters used to determine the intensity of the stimulus.

(vii) In automated static threshold perimetry, the intensity of the stimulus varies. The intensity of the stimulus is expressed in decibels (dB). We need to determine the dB level that corresponds to a 4e intensity for the particular perimeter being used. We will then use the dB printout to determine which points would be seen at a 4e intensity level. For example, in Humphrey Field Analyzers, a 10 dB stimulus is equivalent to a 4e stimulus. A dB level that is higher than 10 represents a dimmer stimulus, while a dB level that is lower than 10 represents a brighter stimulus. Therefore, for tests performed on Humphrey Field Analyzers, any point seen at 10 dB or higher is a point that would be seen with a 4e stimulus.

(viii) We can also use visual field measurements obtained using kinetic perimetry, such as the Humphrey ''SSA Test Kinetic'' or Goldmann perimetry, instead of automated static threshold perimetry. The kinetic test must use a white III4e stimulus projected on a white 31.5 apostilb (10 cd/m^2) background. In automated kinetic tests, such as the Humphrey ''SSA Test Kinetic,'' testing along a meridian stops when you see the stimulus. Because of this, automated kinetic testing does not detect limitations in the central visual field. If your visual disorder has progressed to the point at which it is likely to result in a significant limitation in the central visual field, such as a scotoma (see 2.00A8c), we will not use automated kinetic perimetry to evaluate your visual field loss. Instead, we will assess your visual field loss using automated static threshold perimetry or manual kinetic perimetry.

(ix) We will not use the results of visual field screening tests, such as confrontation tests, tangent screen tests, or automated static screening tests, to determine that your impairment meets or medically equals a listing or to evaluate your residual functional capacity. However, we can consider normal results from visual field screening tests to determine whether your visual disorder is severe when these test results are consistent with the other evidence in your case record. (See §§ 404.1520(c), 404.1521, 416.920(c), and 416.921.) We will not consider normal test results to be consistent with the other evidence if either of the following applies:

A. The clinical findings indicate that your visual disorder has progressed to the point that it is likely to cause visual field loss, or

B. You have a history of an operative procedure for retinal detachment.

b. *Use of corrective lenses.* You must not wear eyeglasses during the visual field examination because they limit your field of vision. Contact lenses or perimetric lenses may be used to correct visual acuity during the visual field examination in order to obtain the most accurate visual field measurements. For this single purpose, you do not need to demonstrate that you have the ability to use the contact or perimetric lenses on a sustained basis.

7. *How do we calculate visual efficiency?*

a. *Visual acuity efficiency.* We use the percentage shown in Table 1 that corresponds to the best-corrected visual acuity for distance in your better eye.

b. *Visual field efficiency.* We use kinetic perimetry to calculate visual field efficiency by adding the number of degrees seen along the eight principal meridians in your better eye and dividing by 500. (See Table 2.)

c. *Visual efficiency.* We calculate the percent of visual efficiency by multiplying the visual acuity efficiency by the visual field efficiency and converting the decimal to a percentage. For example, if your visual acuity efficiency is 75 percent and your visual field efficiency is 64 percent, we will multiply 0.75×0.64 to determine that your visual efficiency is 0.48, or 48 percent.

8. *How do we evaluate specific visual problems?*

a. *Statutory blindness.* Most test charts that use Snellen methodology do not have lines that measure visual acuity between 20/100 and 20/200. Newer test charts, such as the Bailey-Lovie or the Early Treatment Diabetic Retinopathy Study (ETDRS), do have lines that measure visual acuity between 20/100 and 20/200. If your visual acuity is measured with one of these newer charts, and you cannot read any of the letters on the 20/100 line, we will determine that you have statutory blindness based on a visual acuity of 20/200 or less. For example, if your best-corrected visual acuity for distance in the better eye was determined to be 20/160 using an ETDRS chart, we will find that you have statutory blindness. Regardless of the type of test chart used, you do not have statutory blindness if you can read at least one letter on the 20/100 line. For example, if your best-corrected visual acuity for distance in the better eye was determined to be 20/125+1 using an ETDRS chart, we will find that you do not have statutory blindness as you are able to read one letter on the 20/100 line.

b. *Blepharospasm.* This movement disorder is characterized by repetitive, bilateral, involuntary closure of the eyelids. If you have this disorder, you may have measurable visual acuities and visual fields that do not satisfy the criteria of 2.02 or 2.03. Blepharospasm generally responds to therapy. However, if therapy is not effective, we will consider how the involuntary closure of your eyelids affects your ability to maintain visual functioning over time.

c. *Scotoma.* A scotoma is a non-seeing area in the visual field surrounded by a seeing area. When we measure the visual field, we subtract the length of any scotoma, other than the normal blind spot, from the overall length of any diameter on which it falls.

* * * * *

C. *How do we evaluate impairments that do not meet one of the special senses and speech listings?*

1. These listings are only examples of common special senses and speech disorders that we consider severe enough to prevent an individual from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a medically determinable impairment(s) that does not meet a listing, we will determine whether the impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926.) If you have an impairment(s) that does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. Therefore, we proceed to the fourth, and if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. When we decide whether you continue to be disabled, we use the rules in §§ 404.1594, 416.994, or 416.994a, as appropriate.

2.01 Category of Impairments, Special Senses and Speech

2.02 *Loss of visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of the visual field in the better eye,* with:

A. The widest diameter subtending an angle around the point of fixation no greater than 20 degrees;

OR

B. A mean deviation of –22 or worse, determined by automated static threshold perimetry as described in 2.00A6a(v);

OR

C. A visual field efficiency of 20 percent or less as determined by kinetic perimetry (see 2.00A7b).

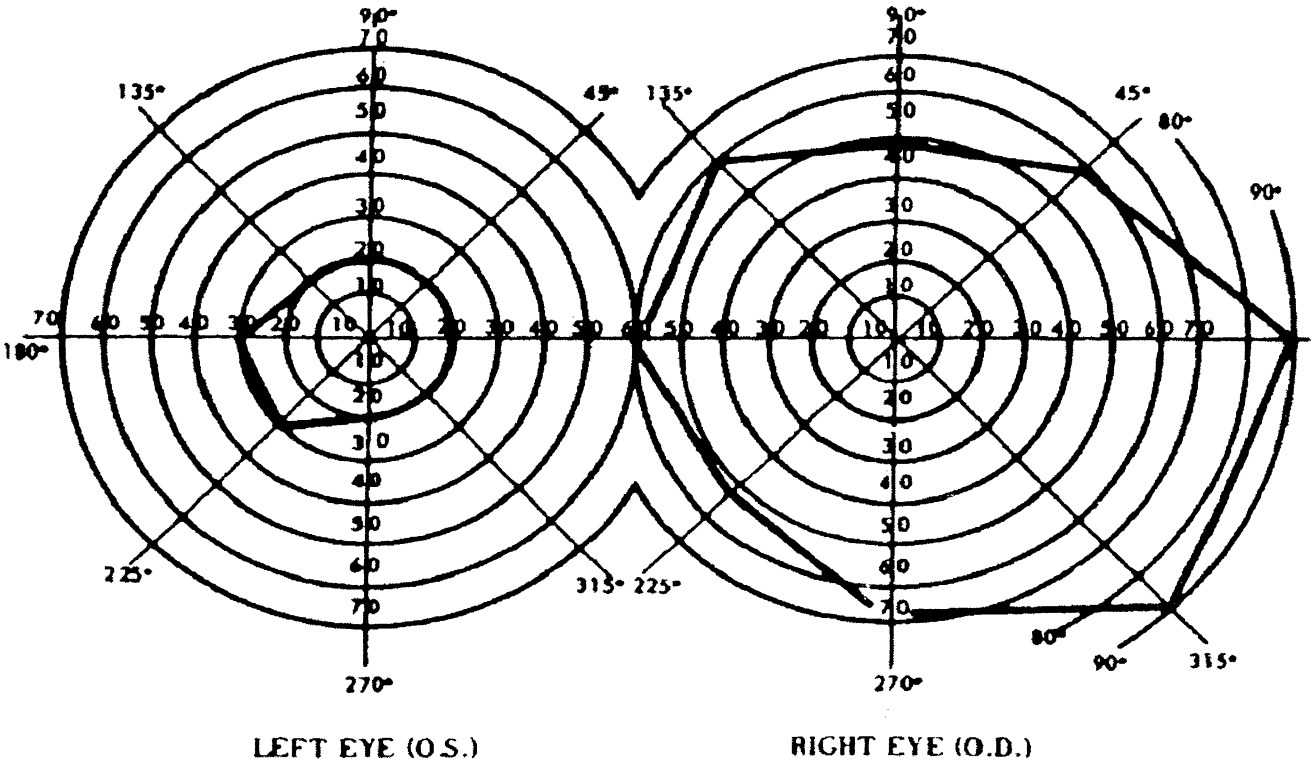
2.04 *Loss of visual efficiency.* Visual efficiency of the better eye of 20 percent or less after best correction (see 2.00A7c).

* * * * *

TABLE 1.—PERCENTAGE OF VISUAL ACUITY EFFICIENCY CORRESPONDING TO THE BEST-CORRECTED VISUAL ACUITY MEASUREMENT FOR DISTANCE IN THE BETTER EYE

Snellen		Percent visual acuity efficiency
English	Metric	
20/16	6/5	100
20/20	6/6	100
20/25	6/7.5	95
20/30	6/9	90
20/40	6/12	85
20/50	6/15	75
20/60	6/18	70
20/70	6/21	65
20/80	6/24	60
20/100	6/30	50

TABLE 2.—CHART OF VISUAL FIELDS



1. The diagram of the right eye illustrates the extent of a normal visual field as measured with a III4e stimulus. The sum of the eight principal meridians of this field is 500 degrees.

2. The diagram of the left eye illustrates a visual field contracted to 30 degrees in two meridians and to 20 degrees in the remaining six meridians. The percent of visual field efficiency of this field is: $(2 \times 30) + (6 \times 20) = 180 \div 500 = 0.36$ or 36 percent visual field efficiency.

* * * * *

Part B

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102.00 SPECIAL SENSES AND SPEECH

A. *How do we evaluate visual disorders?*

1. *What are visual disorders?* Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or perform other age-appropriate activities. A loss of visual fields limits your ability to perceive visual stimuli in the peripheral extent of vision.

2. *How do we define statutory blindness?* Statutory blindness is blindness as defined in sections 216(i)(1) and 1614(a)(2) of the Social Security Act (the Act). The Act defines blindness as visual acuity of 20/200 or less in the better eye with the use of a correcting lens. We use your best-corrected visual acuity for distance in the better eye when we determine if this definition is met. The Act also provides that an eye that has a visual field limitation such that the widest diameter of the visual field subtends an angle no

greater than 20 degrees is considered as having visual acuity of 20/200 or less. You have statutory blindness only if your visual disorder meets the criteria of 102.02 or 102.03A. You do not have statutory blindness if your visual disorder medically equals the criteria of 102.02 or 102.03A, or if it meets or medically equals 102.03B, 102.03C, or 102.04. If your visual disorder medically equals the criteria of 102.02 or 102.03A, or if it meets or medically equals 102.03B, 102.03C, or 102.04, we will find that you have a disability if your visual disorder also meets the duration requirement.

3. *What evidence do we need to establish statutory blindness under title XVI?* For title XVI, the only evidence we need to establish statutory blindness is evidence showing that your visual acuity in your better eye or your visual field in your better eye meets the criteria in 102.00A2, provided that those measurements are consistent with the other evidence in your case record. We do not need to document the cause of your blindness. Also, there is no duration requirement for statutory blindness under title XVI (see §§ 416.981 and 416.983).

4. W*hat evidence do we need to evaluate visual disorders, including those that result in statutory blindness under title II?*

a. To evaluate your visual disorder, we usually need a report of an eye examination that includes measurements of the best-corrected visual acuity or the extent of the visual fields, as appropriate. If there is a loss of visual acuity or visual fields, the cause of the loss must be documented. A standard eye examination will usually reveal the cause of any visual acuity loss. An eye examination can also reveal the cause of some types of visual field deficits. If the eye examination does not reveal the cause of the visual loss, we will request the information that was used to establish the presence of the visual disorder.

b. A cortical visual disorder is a disturbance of the posterior visual pathways or occipital lobes of the brain in which the visual system does not interpret what the eyes are seeing. It may result from such causes as traumatic brain injury, stroke, cardiac arrest, near drowning, a central nervous system infection such as meningitis or encephalitis, a tumor, or surgery. It can be temporary or permanent, and the amount of visual loss can vary. It is possible to have a cortical visual disorder and not have any abnormalities observed in a standard eye examination. Therefore, a diagnosis of a cortical visual disorder must be confirmed by documentation of the cause of the brain lesion. If neuroimaging or visual evoked response (VER) testing was performed, we will request a copy of the report or other medical evidence that describes the findings in the report.

c. If your visual disorder does not satisfy the criteria in 102.02, 102.03, or 102.04, we will also request a description of how your visual disorder impacts your ability to function.

5. *How do we measure best-corrected visual acuity?*

a. *Testing for visual acuity.*

(i) When we need to measure your best-corrected visual acuity, we will use visual acuity testing that was carried out using Snellen methodology or any other testing methodology that is comparable to Snellen methodology.

(ii) We consider tests such as the Landolt C test or the tumbling-E test, which are used to evaluate young children who are unable to participate in testing using Snellen methodology, to be comparable to testing using Snellen methodology. These alternate methods for measuring visual acuity should be performed by specialists with expertise in assessment of childhood vision.

(iii) If you are unable to participate in testing using Snellen methodology or other comparable testing, we will consider your fixation and visual-following behavior. If both these behaviors are absent, we will consider the anatomical findings or the results of neuroimaging, electroretinogram, or VER testing when this testing has been performed.

b. Determining best-corrected visual acuity.

(i) Best-corrected visual acuity is the optimal visual acuity attainable with the use of a corrective lens. In some instances, this assessment may be performed using a specialized lens; for example, a contact lens. We will use the visual acuity measurements obtained with a specialized lens only if you have demonstrated the ability to use the specialized lens on a sustained basis. However, we will not use visual acuity measurements obtained with telescopic lenses because they significantly reduce the visual field. If you have an absent response to VER testing in an eye, we can determine that your best-corrected visual acuity is 20/200 or less in that eye. However, if you have a positive response to VER testing in an eye, we will not use that result to determine your best-corrected visual acuity in that eye. Additionally, we will not use the results of pinhole testing or automated refraction acuity to determine your best-corrected visual acuity.

(ii) We will use the best-corrected visual acuity for distance in your better eye when we determine whether your loss of visual acuity satisfies the criteria in 102.02A. The best-corrected visual acuity for distance is usually measured by determining what you can see from 20 feet. If your visual acuity is measured for a distance other than 20 feet, we will convert it to a 20-foot measurement. For example, if your visual acuity is measured at 10 feet and is reported as 10/40, we will convert this to 20/80.

(iii) If you cannot participate in visual acuity testing, we will determine that your best-corrected visual acuity is 20/200 or less in your better eye if your visual disorder meets the criteria in 102.02B. To meet 102.02B1, your impairment must result in the absence of fixation and visual-following behavior and abnormal anatomical findings indicating a visual acuity of 20/200 or less in your better eye. Such abnormal anatomical findings include, but are not limited to, the presence of Stage III or worse retinopathy of prematurity despite surgery, hypoplasia of the optic nerve, albinism with macular aplasia, and bilateral optic atrophy. To meet 102.02B2, your impairment must result in the absence of fixation and visual-following behavior and abnormal neuroimaging documenting damage to the cerebral cortex which would be expected to prevent the development of a visual acuity better than 20/200 in your better eye. Such abnormal neuroimaging includes, but is not limited to, neuroimaging showing bilateral encephalomyelitis or bilateral encephalomalacia.

6. *How do we measure visual fields?*

a. *Testing for visual fields.*

(i) We generally need visual field testing when you have a visual disorder that could result in visual field loss, such as glaucoma, retinitis pigmentosa, or optic neuropathy, or when you display behaviors that suggest a visual field loss.

(ii) When we need to measure the extent of your visual field loss, we will use visual field measurements obtained with an automated static threshold perimetry test performed on a perimeter, like the Humphrey Field Analyzer, that satisfies all of the following requirements:

A. The perimeter must use optical projection to generate the test stimuli.

B. The perimeter must have an internal normative database for automatically comparing your performance with that of the general population.

C. The perimeter must have a statistical analysis package that is able to calculate visual field indices, particularly mean deviation.

D. The perimeter must demonstrate the ability to correctly detect visual field loss and correctly identify normal visual fields.

E. The perimeter must demonstrate good test-retest reliability.

F. The perimeter must have undergone clinical validation studies by three or more independent laboratories with results published in peer-reviewed ophthalmic journals.

(iii) The test must use a white size III Goldmann stimulus and a 31.5 apostilb (10 cd/m^2) white background. The stimuli locations must be no more than 6 degrees apart horizontally or vertically. Measurements must be reported on standard charts and include a description of the size and intensity of the test stimulus.

(iv) To determine statutory blindness based on visual field loss (102.03A), we need a test that measures the central 24 to 30 degrees of the visual field; that is, the area measuring 24 to 30 degrees from the point of fixation. Acceptable tests include the Humphrey 30–2 or 24–2 tests.

(v) The criterion in 102.03B is based on the use of a test performed on a Humphrey Field Analyzer that measures the central 30 degrees of the visual field. We can also use comparable results from other acceptable perimeters; for example, a mean defect of 22 on an acceptable Octopus test, to determine that the criterion in 102.03B is met. We cannot use tests that do not measure the central 30 degrees of the visual field, such as the Humphrey 24–2 test, to determine if your impairment meets or medically equals 102.03B.

(vi) We measure the extent of visual field loss by determining the portion of the visual field in which you can see a white III4e stimulus. The ''III'' refers to the standard Goldmann test stimulus size III, and the

''4e''efers to the standard Goldmann intensity filters used to determine the intensity of the stimulus.

(vii) In automated static threshold perimetry, the intensity of the stimulus varies. The intensity of the stimulus is expressed in decibels (dB). We need to determine the dB level that corresponds to a 4e intensity for the particular perimeter being used. We will then use the dB printout to determine which points would be seen at a 4e intensity level. For example, in Humphrey Field Analyzers, a 10 dB stimulus is equivalent to a 4e stimulus. A dB level that is higher than 10 represents a dimmer stimulus, while a dB level that is lower than 10 represents a brighter stimulus. Therefore, for tests performed on Humphrey Field Analyzers, any point seen at 10 dB or higher is a point that would be seen with a 4e stimulus.

(viii) We can also use visual field measurements obtained using kinetic perimetry, such as the Humphrey ''SSA Test Kinetic'' or Goldmann perimetry, instead of automated static threshold perimetry. The kinetic test must use a white III4e stimulus projected on a white 31.5 apostilb (10 cd/m^2) background. In automated kinetic tests, such as the Humphrey ''SSA Test Kinetic,'' testing along a meridian stops when you see the stimulus. Because of this, automated kinetic testing does not detect limitations in the central visual field. If your visual disorder has progressed to the point at which it is likely to result in a significant limitation in the central visual field, such as a scotoma (see 102.00A8c), we will not use automated kinetic perimetry to evaluate your visual field loss. Instead, we will assess your visual field loss using automated static threshold perimetry or manual kinetic perimetry.

(ix) We will not use the results of visual field screening tests, such as confrontation tests, tangent screen tests, or automated static screening tests, to determine that your impairment meets or medically equals a listing, or functionally equals the listings. However, we can consider normal results from visual field screening tests to determine whether your visual disorder is severe when these test results are consistent with the other evidence in your case record. (See § 416.924(c).) We will not consider normal test results to be consistent with the other evidence if either of the following applies:

A. The clinical findings indicate that your visual disorder has progressed to the point that it is likely to cause visual field loss; or

B. You have a history of an operative procedure for retinal detachment.

b. *Use of corrective lenses.* You must not wear eyeglasses during the visual field examination because they limit your field of vision. Contact lenses or perimetric lenses may be used to correct visual acuity during the visual field examination in order to obtain the most accurate visual field measurements. For this single purpose, you do not need to demonstrate that you have the ability to use the contact or perimetric lenses on a sustained basis.

7. *How do we calculate visual efficiency?*

a. *Visual acuity efficiency.* We use the percentage shown in Table 1 that corresponds to the best-corrected visual acuity for distance in your better eye.

b. *Visual field efficiency.* We use kinetic perimetry to calculate visual field efficiency by adding the number of degrees seen along the eight principal meridians in your better eye and dividing by 500. (See Table 2.)

c. *Visual efficiency.* We calculate the percent of visual efficiency by multiplying the visual acuity efficiency by the visual field efficiency and converting the decimal to a percentage. For example, if your visual acuity efficiency is 75 percent and your visual field efficiency is 64 percent, we will multiply 0.75×0.64 to determine that your visual efficiency is 0.48, or 48 percent.

8. *How do we evaluate specific visual problems?*

a. *Statutory blindness.* Most test charts that use Snellen methodology do not have lines that measure visual acuity between 20/100 and 20/200. Newer test charts, such as the Bailey-Lovie or the Early Treatment Diabetic Retinopathy Study (ETDRS), do have lines that measure visual acuity between 20/100 and 20/200. If your visual acuity is measured with one of these newer charts, and you cannot read any of the letters on the 20/100 line, we will determine that you have statutory blindness based on a visual acuity of 20/200 or less. For example, if your best-corrected visual acuity for distance in the better eye was determined to be 20/160 using an ETDRS chart, we will find that you have statutory blindness. Regardless of the type of test chart used, you do not have statutory blindness if you can read at least one letter on the 20/100 line. For example, if your best-corrected visual acuity for distance in the better eye was determined to be 20/125+1 using an ETDRS chart, we will find that you do not have statutory blindness as you are able to read one letter on the 20/100 line.

b. *Blepharospasm.* This movement disorder is characterized by repetitive, bilateral, involuntary closure of the eyelids. If you have this disorder, you may have measurable visual acuities and visual fields that do not satisfy the criteria of 102.02 or 102.03. Blepharospasm generally responds to therapy. However, if therapy is not effective, we will consider how the involuntary closure of your eyelids affects your ability to maintain visual functioning over time.

c. *Scotoma.* A scotoma is a non-seeing area in the visual field surrounded by a seeing area. When we measure the visual field, we subtract the length of any scotoma, other than the normal blind spot, from the overall length of any diameter on which it falls.

* * * * *

C. *How do we evaluate impairments that do not meet one of the special senses and speech listings?*

1. These listings are only examples of common special senses and speech disorders that we consider severe enough to result in marked and severe functional limitations. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a medically determinable impairment(s) that does not meet a listing, we will determine whether the impairment(s) medically equals a listing or functionally equals the listings. (See §§ 416.926 and 416.926a.) We use the rules in § 416.994a when we decide whether you continue to be disabled.

102.01 Category of Impairments, Special Senses and Speech

102.02 Loss of visual acuity.

A. Remaining vision in the better eye after best correction is 20/200 or less;

OR

B. An inability to participate in testing using Snellen methodology or other comparable visual acuity testing and clinical findings that fixation and visual-following behavior are absent in the better eye, and:

1. Abnormal anatomical findings indicating a visual acuity of 20/200 or less in the better eye; or

2. Abnormal neuroimaging documenting damage to the cerebral cortex which would be expected to prevent the development of a visual acuity better than 20/200 in the better eye; or

3. Abnormal electroretinogram documenting the presence of Leber's congenital amaurosis or achromatopsia; or

4. An absent response to VER testing in the better eye.

102.03 *Contraction of the visual field in the better eye,* with:

A. The widest diameter subtending an angle around the point of fixation no greater than 20 degrees;

OR

B. A mean deviation of –22 or worse, determined by automated static threshold perimetry as described in 102.00A6a(v);

OR

C. A visual field efficiency of 20 percent or less as determined by kinetic perimetry (see 102.00A7b).

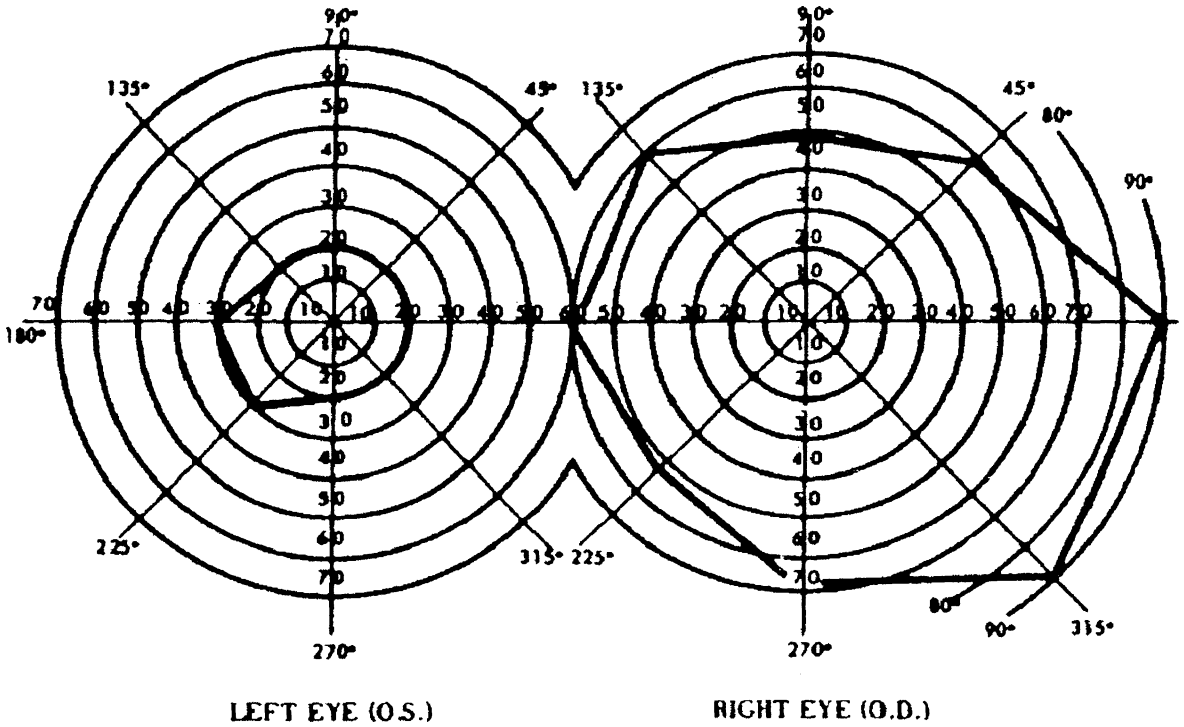
102.04 *Loss of visual efficiency.* Visual efficiency of the better eye of 20 percent or less after best correction (see 102.00A7c).

* * * * *

TABLE 1.—PERCENTAGE OF VISUAL ACUITY EFFICIENCY CORRESPONDING TO THE BEST-CORRECTED VISUAL ACUITY MEASUREMENT FOR DISTANCE IN THE BETTER EYE

Snellen		Percent visual acuity efficiency
English	Metric	
20/16	6/5	100
20/20	6/6	100
20/25	6/7.5	95
20/30	6/9	90
20/40	6/12	85
20/50	6/15	75
20/60	6/18	70
20/70	6/21	65
20/80	6/24	60
20/100	6/30	50

TABLE 2.—CHART OF VISUAL FIELDS



1. The diagram of the right eye illustrates the extent of a normal visual field as measured with a III4e stimulus. The sum of the eight principal meridians of this field is 500 degrees.

2. The diagram of the left eye illustrates a visual field contracted to 30 degrees in two meridians and to 20 degrees in the remaining six meridians. The percent of visual field efficiency of this field is: $(2 \times 30) + (6 \times 20) = 180 \div 500 = 0.36$ or 36 percent visual field efficiency.

[FR Doc. 06–9236 Filed 11–17–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–06–131]

RIN 1625–AA00

Safety Zone; Cocheco River Dredging Project, Cocheco River, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around a blasting project between the Upper and Lower Narrows of the Cocheco River near Dover, NH. This safety zone is necessary to provide for the safety of persons and vessels in the maritime community from the hazards associated with a blasting project. Entry into this zone by any vessel is prohibited unless specifically authorized by the Captain of the Port, Northern New England.

DATES: This rule is effective from 8 a.m. Eastern Standard Time (EST) on November 15, 2006 until 4 p.m. Eastern Standard Time (EST) on December 30, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–06–131 and are available for inspection or copying at U.S. Coast Guard Sector Northern New England, 259 High Street, South Portland, ME 04106 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade J. B. Bleacher, Prevention Department, Sector Northern New England at (207) 742–5421.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The final details of the project were not determined until October 23, 2006 making it impossible to publish a NPRM or a final rule 30 days in advance of the desired effective dates. Further, postponing the blasting project is impractical as ice conditions in the river will increase the difficulty of completing this project on schedule. The Coast Guard finds that immediate action is needed to protect mariners against the potential hazards associated with these blasting operations. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds, for the same reasons, that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On November 1, 2006, Charter Environmental, Inc. began dredging operations on the Cocheco River between the Upper and Lower Narrows in order to both widen and deepen the river channel. Ledge areas in the river will be removed by drilling and blasting methods. Blasting operations are scheduled to begin November 15, 2006 and end on December 30, 2006. Charter Environmental, Inc. will notify the USCG at least 24 hours prior to any blasting operation and all blasting will be conducted only at high tide. Public notifications will be made during the effective period via marine safety information broadcasts. This regulation establishes a 100 yard safety zone around all blasting areas. Entry into this

zone will be prohibited unless authorized by the Captain of the Port.

Discussion of Rule

This rule is effective from 8 a.m. EST on November 15, 2006 until 4 p.m. EST on December 30, 2006. This safety zone is needed to safeguard mariners from the hazards associated with blasting operations on the designated waters in the Cocheco River. During the effective period of the safety zone, vessel traffic will be restricted in various portions of the river, depending on where blasting operations are taking place. Although the safety zone will be in effect for six weeks, it will only be enforced during actual blasting times. Entry into those zones by any vessel is prohibited unless specifically authorized by the Captain of the Port, Northern New England.

The Captain of the Port anticipates negligible negative impact on vessel traffic from this temporary safety zone as it will be in effect only during blasting operations. Blasting will only be scheduled for times of high tide and it is anticipated that if the occasional vessel needs to transit with high tide depths it is unlikely that blasting will prevent passage during the entire high tide cycle. Further, vessel traffic is extremely light at this time of year. It has been determined that the enhanced safety to life and property provided by this rule greatly outweighs any potential negative impacts. Public notifications will be made during the entire effective period of this safety zone via marine information broadcasts.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The effect of this rule will not be significant for the following reasons: the safety zone will be enforced only during blasting operations. Vessels will be permitted to transit and navigate in the effected waters when no blasting is taking place, minimizing any adverse impact. The blasting operations are being conducted in winter months when vessel traffic is extremely light. Additionally, extensive maritime advisories will be broadcast during the duration of the effective period.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit in the vicinity of the Upper and Lower Narrows on the Cocheco River. The safety zone will not have a significant impact on a substantial number of small entities for the reasons described under the Regulatory Evaluation section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant Junior Grade J. B. Bleacher, Prevention Department, Sector Northern New England at (207) 742–5421.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because

it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T01–131 to read as follows:

§ 165.T01–131 Safety Zone; Cocheco River Dredging Project, Cocheco River, NH.

(a) *Location.* The following area is a safety zone: all waters in the Cocheco River, from surface to bottom, between the Upper and Lower Narrows within 100 yards of any and all blasting operations. All vessels are restricted from entering this area.

(b) *Effective Period.* This section is effective from 8 a.m. Eastern Standard Time (EST) on November 15, 2006 until 4 p.m. EST on December 30, 2006.

(c) *Definitions.* (1) *Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP).

(2) *[Reserved]*

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the COTP, Northern New England or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative.

Dated: November 7, 2006.

Stephen P. Garrity,

Captain, U.S. Coast Guard, Captain of the Port, Northern New England.

[FR Doc. E6–19561 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Honolulu 06–007]

RIN 1625–AA00

Safety Zone; Kealakekua Bay, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Kealakekua Bay on the Island of Hawaii. This zone is established at the request of the Hawaii County Civil Defense due to mudslides and falling rocks. These falling rocks present a hazard to users of Kealakekua Bay. Entry of persons or vessels into this temporary safety zone is prohibited unless authorized by the Captain of the Port (COTP).

DATES: This rule is effective from 10 a.m. (HST) on October 25, 2006 until 12 a.m. (HST) on April 18, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Honolulu 06–007 and are available for inspection or copying at Coast Guard Sector Honolulu, 433 Ala Moana Blvd, Honolulu, HI between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Quincey Adams, U.S. Coast Guard Sector Honolulu at (808) 842–2600.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This zone is established due to reports of mudslides and falling rocks in Kealakekua Bay causing an immediate danger to the public. Publishing an NPRM and delaying the effective date would be contrary to the public safety. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The COTP finds this good cause to be the immediate need for a safety zone to protect the public.

Background and Purpose

On October 15, 2006, a 6.7-magnitude earthquake occurred at 7:08 am (HST) with an epicenter approximately 10

miles NNW of Kailua-Kona Bay on the island of Hawaii. The Hawaii County Civil Defense requested a safety zone after initial damage assessment reports of mudslides and falling rocks in Kealakekua Bay. In response, COTP Honolulu established a preliminary safety zone in Kealakekua Bay from the shore line to a line drawn from the lighthouse on Ka'awaloa Cove to the Hikiau Heiau landmark on Napo'opo'o Beach. As part of the ongoing damage assessments, the State of Hawaii has requested that the safety zone be reduced in size. The COTP will publish a final rule in the **Federal Register** to cancel this zone prior to its expiration date if future damage assessments indicate that the danger to the public from falling rocks and debris no longer exists.

Discussion of Rule

This temporary safety zone is effective from 10 a.m. (HST) on October 25, 2006 until 12 a.m. on April 18, 2007 unless cancelled earlier by the Captain of the Port. It is located in the waters of Hawaii Island's Kealakekua Bay between the shore and a line drawn from the Captain Cook Monument to the Hikiau Heiau landmark on Napo'opo'o Beach, from the surface of the water to the ocean floor.

The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof. The Captain of the Port will cause notice of the enforcement of the safety zone described in this section to be made by broadcast notice to mariners. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the zone. The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under § 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under § 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone and the limited geographic area affected by it.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect that there will be little or no impact to small entities due to the narrowly tailored scope of this safety zone.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. An ''Environmental Analysis Check List'' and ''Categorical Exclusion Determination (CED)'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a new § 165.T14–149 to read as follows:

§ 165.T14–149 Safety zone; Kealakekua Bay, HI.

(a) *Location.* The following area, in U.S. navigable waters within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10), from the surface of the water to the ocean floor, is a safety zone: All waters of Kealakekua Bay from the shore to a line drawn from the Captain Cook Monument to the Hikiau Heiau landmark on Napo'opo'o Beach.

(b) *Effective dates.* This safety zone is effective from 10 a.m. (HST) on October 25, 2006 until 12 a.m. (HST) on April 18, 2007.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce this temporary safety zone.

(e) *Waiver.* The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(f) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: October 25, 2006.

V.B. Atkins,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu.

[FR Doc. E6–19557 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM13

Phase-In of Full Concurrent Receipt of Military Retired Pay and Veterans Disability Compensation for Certain Military Retirees

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations concerning concurrent receipt of military retired pay and veterans' disability compensation. This final rule implements section 641 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). This law permits certain veterans who are entitled to military retired pay and are receiving disability compensation for a service-connected disability (or a combination of service-connected disabilities) rated at 50 percent or higher to receive disability compensation as well as their military retired pay. The intended effect of the regulation is to clearly state who is eligible for concurrent receipt of disability compensation and military retired pay, who must waive military retired pay to receive disability compensation, and how to file such a waiver.

DATES: *Effective Date:* This amendment is effective November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: On July 7, 2005, VA published in the **Federal Register** (70 FR 39213) a proposal to revise VA's rules concerning concurrent receipt of military retired pay and veterans' disability compensation. Interested persons were invited to submit written comments on or before September 6, 2005. We received comments from six members of the public. Subsequently, on January 6, 2006, Congress further amended section 1414 of title 10, United States Code, by enacting section 663 of Public Law 109–163, the National Defense Authorization Act for Fiscal Year 2006. This Notice first explains why we have made changes based on the comments to the July 7, 2005, notice of proposed rulemaking, and then explains changes necessitated by section 663 of Public Law 109–163.

Comments to July 7, 2005, Notice of Proposed Rulemaking

Three commenters stated support for concurrent receipt. These commenters did not suggest any changes to the proposed rule, and we make no change based on these comments.

Two commenters questioned the 20-year service requirement for the program, and why those who are medically retired from the military, with less than 20 years of service, have to give up their retired pay in order to receive disability compensation. Title 10 U.S.C. 1414(b)(2) clearly precludes persons medically retired with less than 20 years of service from concurrently

receiving retired pay and VA benefits. Thus, in this rulemaking, VA is simply implementing existing law passed by Congress. VA does not have authority to change the eligibility requirements provided by statute regarding the concurrent receipt of retired pay and VA benefits for retired veterans. However, we have removed the general 20-year-service requirement from proposed § 3.750(b)(1) because 10 U.S.C. 1414 contains no such requirement.

Moreover, because we believe that several of the comments, as well as our own internal review during the comment period, suggest a need for some clarification as to the waivers required by 10 U.S.C. 1414 of persons retired under chapter 61 of title 10, U.S.C., we have slightly modified the structure and language of § 3.750(b)(2). Paragraph (b)(2) now clearly states that persons retired under chapter 61 must comply with any waivers required by § 3.750(c) as well as any waivers required by 38 U.S.C. 5304 and 5305, which are explicitly applicable to chapter 61 retirees under 10 U.S.C. 1414(b)(1). We also clarify in paragraph (c) the types of waivers applicable to persons who are eligible for both retired pay and disability compensation. These changes directly implement statutory language, which is not susceptible to a different interpretation, and simply clarify the regulation previously proposed, without changing the rights and obligations governed by that regulation.

One commenter stated that the amendment to 10 U.S.C. 1414 made by section 641 of Public Law 108–136 will also affect 10 U.S.C. 1408, The Uniformed Services Former Spouses Protection Act, Public Law 97–252, 96 Stat. 730 (1982)), which is administered by the Department of Defense (DoD). The commenter asserted that, in affecting section 1408, the new provisions will affect State, local or tribal governments as they independently adjudicate civil court marital separation agreements and divorce decrees, which are required to address protection of a military service person's rights. This comment is outside of the scope of the proposed regulation. The commenter suggested no changes to the regulation; the comment questioned a statute's effect on another, tangentially related statute that is outside VA's authority. Therefore, we make no change based on this comment.

In paragraph (a), we changed, ''For the purposes of this section,'' to read, ''For the purposes of this part,'' because all part 3 references to military retired pay meet this definition. Also in paragraph (a), we changed ''classified as military retired pay'' to ''classified as retired pay'' to clarify that the service department need not use the specific adjective ''military'' in its classification. No substantive change is intended by this clarification.

Changes Necessitated by Section 663 of Public Law 109–163

On January 6, 2006, section 663 of the National Defense Authorization Act for Fiscal Year 2006, Public Law 109–163, amended section 1414 of title 10, United States Code. Section 663 permits certain veterans who are eligible for military retired pay and for veterans' disability compensation for 100-percent disability based on a determination of individual unemployability to receive concurrent payment of both military retired pay and disability compensation subject to the phase-in period during the period beginning on January 1, 2004, and ending on September 30, 2009. VA adjudicates individual unemployability claims under 38 CFR 4.16. Based on this change in law, we have included veterans receiving disability compensation based on a VA determination of individual unemployability under 38 CFR 4.16 in section (b)(1), and added language to section (c)(ii) concerning the phase-in period to incorporate this provision into the rule.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted as a final rule with the changes noted above.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rulemaking are 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Pensions, Veterans.

Approved: August 10, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.750 to read as follows:

§ 3.750 Entitlement to concurrent receipt of military retired pay and disability compensation.

(a) *Definition of military retired pay.* For the purposes of this part, military retired pay is payment received by a veteran that is classified as retired pay by the Service Department, including retainer pay, based on the recipient's service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration.

(b) *Payment of both military retired pay and disability compensation or improved pension*—(1) *Compensation.* Subject to paragraphs (b)(2) and (b)(3) of this section, a veteran who is entitled to military retired pay and disability compensation for a service-connected disability rated 50 percent or more, or a combination of service-connected disabilities rated at 50 percent or more, under the schedule for rating disabilities (38 CFR part 4, subpart B), or based on a determination of individual unemployability under 38 CFR 4.16, is entitled to receive both payments subject to the phase-in period described in paragraph (c) of this section.

(2) *Chapter 61 disability retirees retiring with 20 or more years of service.* Disability retired pay payable under 10 U.S.C. Chapter 61 to a veteran with 20 or more years of creditable service may be paid concurrently with disability compensation to a qualifying veteran subject to the following:

(i) Any waiver required during the phase-in period under paragraph (c)(1)(ii) of this section; and

(ii) if the veteran's disability retired pay exceeds the amount of retired pay the veteran would have received had the veteran retired based on length of service, the veteran must waive that excess amount of disability retired pay in order to receive VA disability compensation.

(3) *Chapter 61 disability retirees retiring with less than 20 years of service.* Veterans who receive disability retired pay under 10 U.S.C. Chapter 61 with less than 20 years of creditable service are not eligible for concurrent receipt.

(4) *Improved Pension.* A veteran may receive improved pension and military retired pay at the same time without having to waive military retired pay. However, in determining entitlement to improved pension, VA will treat military retired pay in the same manner as countable income from other sources.

(c) *Waiver*—(1) *When a waiver is necessary.* (i) A waiver of military retired pay is necessary in order to receive disability compensation when a veteran is eligible for both military retired pay and disability compensation but is not eligible under paragraphs (b)(1) or (b)(2) of this section to receive both benefits at the same time.

(ii) All veterans who are eligible to receive both military retired pay and disability compensation at the same time under paragraphs (b)(1) or (b)(2) of this section, except those receiving compensation for a disability rated 100 percent, must file a waiver in order to receive the maximum allowable amount of disability compensation during the phase-in period. For veterans receiving disability compensation based on a VA determination of individual unemployability, the phase-in period ends on December 30, 2009. For all other veterans, the phase-in period ends on December 31, 2013. After the phase-in period, veterans retired under 10 U.S.C. chapter 61 who are eligible for concurrent receipt must still file a waiver under the circumstances described in paragraph (b)(2)(ii) of this section.

(Authority: 10 U.S.C. 1414, 38 U.S.C. 5304, 5305)

(2) *How to file a waiver of military retired pay.* A veteran may request a waiver of military retired pay in any written, signed statement, including a VA form, which reflects a desire to waive all or some military retired pay. The statement must be submitted to VA or to the Federal agency that pays the veteran's military retired pay. VA will treat as a waiver an application for VA compensation filed by a veteran who is entitled to military retired pay.

(d) *Elections and the right to reelect either benefit.* (1) A veteran who has filed a waiver of military retired pay under this section has elected to receive disability compensation. A veteran may reelect between benefits covered by this section at any time by submitting a written, signed statement to VA or to the Federal agency that pays the veteran's military retired pay.

(2) An election filed within 1 year from the date of notification of Department of Veterans Affairs entitlement will be considered as ''timely filed'' for effective date purposes. See § 3.401(e)(1). If the veteran is incompetent, the 1-year period will begin on the date that notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if the claimant was not advised of his or her right of election and its effect.

(Authority: 38 U.S.C. 5304(a), 5305)

[FR Doc. E6–19603 Filed 11–17–06; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AZ–06–01; FRL–8243–8]

Notice of Resolution of Notice of Deficiency for Clean Air Operating Permits Program; Maricopa County, AZ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of resolution.

SUMMARY: EPA issued a notice of deficiency on May 17, 2005, in which EPA identified problems with Maricopa County's Clean Air Act title V operating permits program and a timeframe for the County to correct these deficiencies. The Maricopa County Air Quality Department submitted corrections to its permit program in quarterly updates beginning in February 2006 and in a final submittal dated October 20, 2006. This notice announces that, based on information provided by Maricopa County Air Quality Department, EPA concludes that Maricopa County has resolved all of the issues identified in the May 17, 2005 Notice of Deficiency. As a result, EPA will not impose sanctions set forth under the mandatory sanctions provisions of the Clean Air Act. In addition, EPA will not promulgate, administer, and enforce a whole or partial operating permit program pursuant to the title V regulations of the Clean Air Act within two years after the date of the finding of deficiency.

DATES: *Effective Date:* November 9, 2006. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Anna Yen, EPA, Region 9, Air Division (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3976, or *r9airpermits@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Background
II. Maricopa County's Submittal and EPA's Determination
III. EPA's Action

IV. Administrative Requirements

I. Background

On May 17, 2005, EPA issued a notice of deficiency (NOD) for the title V operating permits program in Maricopa County, Arizona. (70 FR 32243, June 2, 2005). The NOD was based upon EPA's findings that the County's title V program did not comply with the requirements of the Clean Air Act (CAA or Act) or with the implementing regulations at 40 CFR part 70. The deficiencies EPA found were in two main categories: (1) Permit fees and (2) permit processing.

Maricopa County was required to address these deficiencies within 18 months of the effective date of the NOD, or the County would be subject to the sanctions under 40 CFR 70.10(b)(3) and section 179(b) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the permitting authority has not corrected the deficiency within 18 months of the date of the finding of deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

Region 9 performed a title V program evaluation of Maricopa County Environmental Services Department (MCESD) beginning May 27, 2004. On May 18, 2005, Region 9 issued the final program evaluation report [1] to MCESD. The deficiencies identified in the NOD are a subset of the findings described in the program evaluation report. While the program evaluation report was still being finalized, Maricopa County initiated a number of changes. In November of 2004, Maricopa County created a new Air Quality Department, separate from MCESD. In addition, Maricopa County filled two key management positions in the Maricopa County Air Quality Department (MCAQD): Department Director and Permit Engineering Division Manager. In March 2005, Robert Kard was hired as the new Department Director. In April 2005, Kathlene Graf was promoted to the position of Permit Engineering Division Manager.[2] With the reorganization and new management, Maricopa County has implemented or begun to implement many improvements to its title V program, in terms of both accepted practices and formalized procedures.

[1] The report titled ''Maricopa County Environmental Services Department Title V Operating Permit Program Evaluation,'' is available at *http://www.epa.gov/region09/air/titlevevals.html.*

[2] MCAQD has nine divisions, one of which is the Permit Engineering Division.

II. Maricopa County's Submittal and EPA's Determination

On August 15, 2005, Maricopa County Air Quality Department (MCAQD) submitted a corrective action plan entitled ''Response to EPA Notice of Deficiency & Title V Audit'' to EPA. In the plan, MCAQD responded to each deficiency noted in the May 17, 2005 NOD and to each finding in EPA's title V program evaluation report by proposing a correction for each deficiency and an action to address each EPA finding. The submittal also included a timeline that showed milestones and dates for completion of each milestone.

Beginning in February 2006, Maricopa County Air Quality Department (MCAQD) submitted quarterly updates to EPA to show its progress in correcting the deficiencies noted in the NOD and in addressing the findings of the title V program evaluation report. The submittals included numerous attachments, many of which were new policy documents, guidance documents, and standard operating procedures. On October 23, 2006, EPA received MCAQD's submittal, the ''Response to the Notice of Deficiency,'' (NOD Response), dated October 20, 2006. The NOD Response is available to view in the docket, Docket ID No. AZ–Maricopa–06–1–OPS. In the NOD Response, and the preceding quarterly updates, MCAQD explained and documented how each of the deficiencies identified in the NOD had been, or were being, addressed. The NOD Response contains documented internal organizational and operational changes within MCAQD, an interim guidance document for title V permit revisions, a copy of the revised fee rule and new delinquent fee policy, a fee demonstration, a description of the improved accounting system, a workload assessment for title V, and other supporting attachments.

This notice focuses only on MCAQD's responses to correct the deficiencies identified in the NOD. Based on the information in MCAQD's NOD Response, and the preceding quarterly updates, EPA has determined that MCAQD has demonstrated that it has resolved each of the issues listed in the May 17, 2005 NOD, as discussed below.

A. Permit Fees

1. Demonstration of Sufficient Fees To Cover Program Costs and That Fees Are Used Solely for Title V

a. Fee Demonstration

Pursuant to 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), a permitting authority's title V program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs. 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) provide that a permitting authority may collect fees that cover the actual permit program costs, or may use a presumptive fee schedule, adjusted for inflation.

Maricopa County's permit fee structure is a combination of an application fee, hourly-based processing fee, annual administrative fee, and annual emissions-based fee. The emissions-based fee is less than EPA's presumptive minimum, and, since other components of the permit fees are not assessed on a per-ton basis, it was difficult to determine if the aggregate of the fees met the presumptive minimum. In addition, though Maricopa County was able to account for title V revenues quite accurately, it did not have a clear accounting of its costs incurred under title V. Therefore, Maricopa County was not able to demonstrate that title V permit fees collected were sufficient to fund its title V program.

To address this issue, MCAQD provided a fee demonstration to show that the aggregate of its title V fees is equivalent to a fee greater than the presumptive minimum, as allowed by 40 CFR 70.9(b)(2)(i). MCAQD charges a dollar-per-ton emissions-based fee for actual emissions of all regulated pollutants emitted during the previous calendar year. Therefore, the fee demonstration includes fiscal year 2006 (July 2005 through June 2006) title V revenue, the total reported emissions of regulated pollutants for calendar year 2005, and the resulting dollar-per-ton number, which was compared with EPA's presumptive minimum adjusted for inflation. MCAQD showed that the equivalent of the aggregate of its title V fees in fiscal year 2006 [3] was greater than EPA's presumptive minimum which, adjusted for fiscal year 2006, is $39.48/ton.[4] Therefore, by 40 CFR

[3] Because changes and improvements were being made to MCAQD's accounting system throughout fiscal year 2006, title V program revenue and expenses may not be 100% accurate in reflecting the title V program. However, MCAQD feels it is of sufficient acuracy to show that the aggregate of its fees is substantially greater than EPA's presumptive minimum. MCAQD is in the process of completing reconciliation of fiscal year 2006 title V revenues and expenses to the extent possible, and any corrections made will be reflected in the title V reporting category being established to track the title V fund balance.

[4] September 19, 2005, Memorandum, Calculation of the Part 70 Presumptive Minimum Fee Effective from September 2005 through August 2006, from Jeff Herring, Operating Permits Group, ITPID,

70.9(b)(2)(i), EPA presumes that MCAQD's fee schedule results in the collection and retention of revenues sufficient to cover the title V permit program costs.

b. Demonstration of Title V Fees Being Used Solely for the Title V Program

As stated above, Maricopa County was able to account for title V revenues; however, it did not have a clear accounting of costs incurred under title V. Furthermore, Maricopa County maintained a single account for title V fees, non-title V fees, and enforcement penalties. Both title V and non-title V costs were paid from this account. Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.9(a) provide that a permitting authority's title V program must ensure that all title V fees are used solely for title V permit program costs.

To correct this deficiency, MCAQD started out by hiring a third party to conduct an audit of its accounting system, department-wide. MCAQD's existing accounting system was an activity-based system to an extent; i.e., it did tag certain revenues with identifiers to distinguish one program's revenue from another program's revenue. However, the system did not provide enough detail such that title V costs could be accurately identified. The audit findings led to correction of existing accounting identifiers for costs and revenues and creation of new accounting identifiers. Each title V direct revenue and cost is now tagged with one of the following two activity codes: LSPC (Large Source Permit Compliance) and LSPR (Large Source Permit Engineering Review). These codes are now reflected in MCAQD's financial, personnel, and budgeting systems for all revenues and costs. MCAQD has also defined formulas to allocate title V indirect costs (e.g., administrative, ambient monitoring, planning, modeling) to the appropriate activity codes, thus allowing for a full accounting of its title V program costs.

With this new accounting system, MCAQD has been able to submit to EPA a table of title V revenues and costs, listed by activity code and by general category of revenue/cost, for fiscal year 2006. MCAQD showed that, for fiscal year 2006, its total title V revenues were more than sufficient to fund total title V costs, thus confirming the results of MCAQD's fee demonstration that used EPA's presumptive minimum as a basis for comparison.

With the improvements to its accounting system, MCAQD only partially addressed the issue of demonstrating that title V permit fees are used solely for title V program costs. MCAQD realized that it still needed to address the scenario of title V revenues exceeding title V costs. Currently, all title V revenues and costs [5] are coded before being deposited into or withdrawn from the Air Quality Fee Fund. MCAQD has the ability to identify and total the revenues originating from the title V program and manually track costs against the title V revenue total. However, to facilitate tracking of title V revenues and costs, MCAQD plans to implement an automated method of tracking the title V portion of the Air Quality Fee Fund by setting up a reporting category code in the financial system, similar to the way its grant revenue and costs are tracked. This reporting code will, in effect, generate a ''fund balance report'' on a regular basis to provide a year-to-date total of title V revenues, a year-to-date total of title V costs, and the net balance. It will also provide inception-to-date totals and net balance. This will allow MCAQD to know immediately, upon receipt of the report, the title V balance.

Currently, Maricopa County's Department of Finance generates a fund balance report monthly for the existing funds with reporting codes (e.g., grant funds). The fund balance report is reviewed, reconciled, and certified for accuracy by MCAQD's Financial Administrator. A written response to Maricopa County's Department of Finance is required to certify/validate the information on the report. The procedure will not differ once the title V reporting code is set up in the financial system.

With its accounting system improvements, MCAQD has demonstrated that it has the systematic ability to provide a detailed accounting of title V program costs separately from other program costs. In addition, the above new reporting code coupled with the existing review procedures will reinforce MCAQD's ability to show that title V funds are being used solely for title V program costs.

2. Revision of Maricopa County's Fee Rule

Maricopa County's fee rule, Rule 280, prevented the permitting authority from issuing a final initial title V permit, permit revision, or renewal permit if the source did not pay the balance of fees due. Maricopa County's Rule 280 § 301.1, at the time of NOD issuance, stated, ''The Control Officer shall not issue a permit or permit revision until the balance due on the itemized invoice is paid in full.'' Maricopa County encountered problems with implementation of this rule when several sources refused to pay the balance of permit fees due when they were dissatisfied with certain conditions in their permits. Existing sources retain the initial application shield granted upon their submittal of a complete application; thus, these sources claimed that they could continue to operate without an operating permit. The problem was exacerbated by the fact that Maricopa County did not enforce against those sources that refused to pay fees.

The first step MCAQD took in correcting this deficiency was to implement a policy directive that required permit fee payment within 30 days of the conclusion of the month in which a source was billed. While MCAQD worked on revising its Rule 280, it also created a policy document to provide a consistent process for collecting unpaid fees charged to owners, operators, applicants, and/or permittees of sources of air pollution subject to the Maricopa County Air Pollution Control Regulations. The document serves as guidance for MCAQD personnel.

MCAQD completed revisions to its Rule 280 in February 2006. It added the following language to the rule: ''The Control Officer may deny a permit, a permit revision, or a permit renewal in accordance with Rule 200 of these rules if the applicant does not pay fees required for billable permit actions within 90 days of the invoice date.'' MCAQD also removed the $40,000 maximum fee for processing Title V permit applications, thus enabling MCAQD to recover the full cost associated with issuing a Title V permit. The Maricopa County Board of Supervisors approved revisions to the rule on July 12, 2006, and the Notice of Final Rulemaking was published in the Arizona Administrative Register on

OAQPS, to Operating Permits Contacts EPA Regions I–X.

[5] Costs such as salaries and benefits are charged to the organizational unit to which the employee belongs or supports. These determinations are made jointly by MCAQD's Financial Administrator, the applicable program manager, and the Planning and Analysis Division Manager. Costs such as supplies, services, and capital outlays are charged in the organizational unit that will use the purchased items/services to the extent possible. The program manager determines, with assistance from MCAQD's Finance Division, the appropriate organizational unit and activity code to which the costs should be charged. All expenditures require approval by a program manager and the Financial Administrator. On a monthly basis, program managers review revenue and costs charged to their organizational unit and corresponding activity codes.

August 18, 2006. Though EPA did not include this step in the NOD as a correction to the deficiency, MCAQD also plans to formally submit the revised Rule 280 to EPA (through the State) as a revision to the title V program once all formal rulemaking documents are available (e.g., Board of Supervisor's certification, publication affidavits, Notice of Final Rulemaking).

B. Permit Processing

1. Implementation Guidance Document To Ensure That Title V Permits Assure Compliance With All Applicable Requirements

Pursuant to 40 CFR 70.7(a)(1)(iv), title V permits must assure compliance with all applicable requirements, including new source review (NSR) requirements. Maricopa County issues combined preconstruction/operating permits, with the intention of meeting both the NSR requirements in its State Implementation Plan (SIP) and the part 70 requirements in its title V program. Maricopa County, at times, implemented its title V rule, Rule 210, without proper consideration of the requirements of its NSR SIP Rule 20, resulting in the submittal to EPA of title V permits that did not contain all applicable requirements.

MCAQD has been working continuously over the past year, and communicating regularly with EPA, on an implementation guidance document. It has also given industry an opportunity to comment. MCAQD submitted a final implementation guidance document entitled ''Interim Guidance Document for Title V Permit Revisions'' in the NOD Response. The guidance document explains how title V sources and MCAQD will ensure that changes or modifications to an emissions unit or operation at a title V source will comply with both the preconstruction provisions in the NSR SIP and the permitting procedures in the current Rule 210. Before making changes subject to the NSR SIP, title V sources must obtain preconstruction approval from the County. By laying out procedures for determining the appropriate processing track for title V permit revisions and using flowcharts to step through the gatekeepers, the guidance document provides guidance not only for distinguishing between a significant revision and a minor revision under the title V program, but also for determining whether preconstruction approval is required pursuant to its SIP Rule 20. The guidance document also suggests that a title V source use an attached checklist to document how it proceeded through the flowcharts to reach a determination of the type of permit it would need.

MCAQD plans to accomplish the following implementation steps by November 17, 2006: (1) Distribute a copy of the guidance document to all current title V permit holders; (2) Include the guidance document with all title V permit application forms provided to applicants; (3) Publish the guidance document with printed and on-line versions of Rule 210, to be distributed by the County; and (4) Provide training to title V permit staff on the administration of this guidance.

MCAQD plans to revise its rules when it makes the changes necessary for NSR Reform. MCAQD states that it must wait for the Arizona Department of Environmental Quality to make the changes to the State rules before it can proceed. The Interim Guidance Document will be effective only until the time MCAQD completes its NSR rulemaking to codify the principles spelled out in the guidance document.

2. Written Procedures on Processing of Permit Revisions

EPA noted two deficiencies related to Maricopa County's processing of permit revisions: (a) Maricopa County did not take adequate steps to ensure that significant permit revisions were not incorrectly processed as minor permit revisions; and (b) Maricopa County typically did not issue a separate revised permit document or technical support document when processing its minor permit revisions. Instead, it signed the application for the minor permit revision and allowed it to serve as the final minor permit revision.

MCAQD's implementation guidance document entitled ''Interim Guidance Document for Title V Permit Revisions,'' which was part of the NOD Response, provides a procedure for determining the appropriate processing track for title V permit revisions. One of MCAQD's objectives with this guidance document is to facilitate its own efforts to ensure that significant permit revisions are not incorrectly processed as minor revisions under the title V program. Regarding the deficiency involving minor permit revisions, MCAQD has changed its practices to ensure that a minor permit revision, and not just a signed application, is issued. Furthermore, MCAQD has implemented a new procedure which requires that all title V permit revisions be signed by the Permitting Division Manager and Department Director, unless MCAQD formalizes delegation of the authority to a management level official.

3. Adequate Administering of Fees To Provide Sufficient Staffing

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.4 provide that a permitting authority must have adequate personnel to ensure that the permitting authority can carry out implementation of its title V program. In the NOD, EPA identified the deficiency that Maricopa County was not adequately staffing its title V program.

MCAQD's strategy for hiring and retaining adequate staffing for successful implementation of its title V program included the following elements, not necessarily in this order: (1) Conduct a countywide market study to evaluate current job descriptions, career ladders, and salaries, for an ''environmental engineering specialist'' position; (2) implement salary increases based on the market study results; (3) perform a workload assessment to estimate the number of permitting staff needed; (4) recruit for the additional permitting staff positions; and (5) address career development (e.g., review job classifications, implement a formal training program for staff, provide mentorship to staff).

Maricopa County has a history of high staff turnover within the Permit Engineering Division. As will be described in further detail below, EPA, in its title V program evaluation report, listed poor compensation as one of the contributing factors to low morale at Maricopa County. To address this issue, Maricopa County's general human resources department conducted a market study countywide to evaluate current job descriptions, career ladders, and salaries, for an ''environmental engineering specialist.'' Based on the results of the study, salary increases were approved and became effective December 5, 2005.

MCAQD also analyzed its workload to determine the number of additional staffpersons it would need in the Permit Engineering Division. As part of the NOD Response, MCAQD submitted a title V-specific workload assessment for fiscal year 2006 in which MCAQD estimated that it would need a total of eight title V engineers. MCAQD projected a need for three contract engineers to complete its backlog of work. On March 1, 2006, the Board of Supervisors approved MCAQD's request for an additional four full-time employees (FTEs) for the title V group of the MCAQD Permit Engineering Division. In addition, the Board of Supervisors approved three contract engineering positions, each with a one-year contract, for title V work. If MCAQD is able to fill the four FTE

positions, the resulting total number of title V engineers will be eight, which is consistent with MCAQD's latest workload assessment. MCAQD is actively recruiting to fill the four open title V engineer positions, as well as the three contract engineer positions.

EPA noted in its title V program evaluation report that poor compensation and lack of opportunity for career development contributed to low morale at Maricopa County.[6] So as part of its strategy to retain existing staff, Maricopa County focused on these two main issues. As noted earlier, Maricopa County addressed the first issue of poor compensation through a market study and resulting salary increases. To address the second issue of career development, MCAQD has begun to develop or has already completed the following actions EPA recommended in the title V program evaluation report: a review of the job classifications that would apply to title V engineers, implementation of a training program for staff, creation of standard operating procedures (SOPs), and providing mentorship to staff.

Regarding job classifications, MCAQD has streamlined the number of ''environmental engineering specialist'' (EES) job classifications from three to two and changed the definition of each classification in an effort to clarify the criteria for salary increases and promotions. MCAQD has placed more of an emphasis on number of years of experience as well as having a professional engineering (P.E.) license. For example, MCAQD decided to eliminate the former EES Intern classification which required no experience; instead, the current first-level EES classification requires at least two years of experience, and the second-level EES classification requires a P.E. license. In addition, as evidenced by the implementation of salary increases on December 5, 2005, the range of salaries for each of the current EES classifications is higher than that for any of the former EES classifications. In fact, the range of salaries for the current second-level EES classification is even higher than that for the former EES Supervisor classification.[7]

MCAQD has a contingency plan in place until the open title V engineering positions can be filled. MCAQD's fee rule allows MCAQD to bill a source for the cost of obtaining consultants for expedited permit processing. Because MCAQD has an approved consultant list, the entire process from sending requests for proposals (RFP) to selecting a bidder takes only about 30 to 60 days, which is substantially faster than the standard RFP process. Since 2005, one permitting action has been completed by a consultant through this expedited process. Currently, there are three consulting firms under contract, each one working on a different permitting action. MCAQD estimates that the work performed by the consultants for these four projects (the one completed and the three still in progress) would be equivalent to the work performed by 3 FTEs. MCAQD plans to continue to use consultants as necessary.

MCAQD submitted to EPA a strategy to hire and retain adequate staff to successfully implement its title V program. Included in the submittal was an updated workload assessment specific to title V tasks. MCAQD also described a contingency plan if it was unable to fill open title V engineering positions. MCAQD has followed through on implementation of its strategy and, though it has not completed all steps, we are confident that MCAQD will continue its efforts until it is able to fill all open title V positions.

III. EPA's Action

EPA is notifying the public that, based on the information provided by MCAQD, internal operational changes within MCAQD, and a Maricopa County rule change, EPA has determined that Maricopa County has resolved each of the deficiencies identified by EPA in the NOD for Maricopa County's title V operating permits program, 70 FR 32243 (June 2, 2005). Therefore, based on the rationale set forth above, EPA is not invoking sanctions pursuant to section 179(b) of the Act, nor administering any portion of the County's operating permits program, pursuant to 40 CFR 70.10(b)(4).

IV. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 2007.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 9, 2006.

Wayne Nastri,

Regional Administrator, Region 9.

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BILLING CODE 6560–50–P

[6] See Finding 7.6 of EPA's program evaluation report.

[7] According to MCAQD Human Resources, the average salary increase for the MCAQD Permit Engineering Division per employee ranged from 0.21% to 21%.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Regulation of Fuels and Fuel Additives

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 72 to 80, revised as of July 1, 2006, on page 695, § 80.75 is corrected by reinstating paragraph (a)(2) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(a) * * *

(2) The following information shall be included in each quarterly report for each batch of reformulated gasoline or RBOB which is included under paragraph (a)(1) of this section:

(i) The batch number;

(ii) The date of production;

(iii) The volume of the batch;

(iv) The grade of gasoline produced (i.e., premium, mid-grade, or regular);

(v) For any refiner or importer:

(A) Each designation of the gasoline, pursuant to § 80.65; and

(B) The properties, pursuant to §§ 80.65 and 80.66;

(vi) For any importer, the PADD in which the import facility is located;

(vii) [Reserved]

(viii) In the case of any previously certified gasoline used in a refinery operation under the terms of § 80.65(i), the following information relative to the previously certified gasoline when received at the refinery:

(A) Identification of the previously certified gasoline as such;

(B) The batch number assigned by the receiving refinery;

(C) The date of receipt; and

(D) The volume, properties and designation of the batch.

* * * * *

[FR Doc. 06–55529 Filed 11–17–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2091 and 2710

[WO–350–05 1430 PN]

RIN 1004–AD74

Public Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) amends its procedural regulations pertaining to the time allowed for the segregation of public lands proposed for sale. Under existing regulations, the BLM may segregate these lands from the operation of the public land and mineral laws for a period up to 270 days following publication of a Notice of Realty Action in the **Federal Register**. The Department of the Interior has imposed this time constraint under its discretion and not as a requirement of law. The current segregation period compresses the time necessary to address comments or protests the BLM receives after publication of a Notice of Realty Action. In order to address comments or protests in the normal course of business, as to future proposed sales, this final rule allows the BLM to segregate lands initially for a period of up to two years with the option to extend, if necessary, the initial period of segregation up to two additional years on a case-by-case basis. The BLM also is amending its segregation regulation at 43 CFR 2091.2–1 so that it will be consistent with the changes made in the BLM's public sale regulations.

DATES: This rule is effective December 20, 2006.

ADDRESSES: Further information or questions regarding this final rule should be addressed in writing to the Director (WO 300), Bureau of Land Management 1849 C Street, NW., Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren of the BLM's Lands and Realty Group at 202 452–7779 for information about the content of this final rule, or for information regarding BLM's regulatory process, Cynthia Ellis of the BLM's Regulatory Affairs Group at 202 452–5012. Persons who use a telecommunications device for the deaf may contact these named individuals through the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of the Final Rule
III. Procedural Matters

I. Background

The Secretary of the Interior is authorized to sell public lands managed by the BLM pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) (FLPMA). Regulations implementing the Secretary of the Interior's authority to sell such lands are located in 43 CFR part 2710. These regulations, issued in 1980 and partially amended in 1984, explain the following:

- Policies pertaining to the BLM public land sale program (43 CFR 2710.0–6);
- Definitions of applicable terms (43 CFR 2710.0–5);
- The criteria and means by which lands are determined suitable for FLPMA section 203 sales (43 CFR 2710.0–3, 2710.0–8 and 2711.1);
- The criteria for a qualified conveyee or purchaser (43 CFR 2711.2);
- The procedure for sale, especially the notice, segregation provisions and the competitive, modified competitive, and non-competitive methods (43 CFR 2711. 1–2, 2711.3); and
- Certain other procedural matters and requirements relating to conveyance documents (land patents) (43 CFR 2711.4 and 2711.5).

In regulations issued in 1987 and in part amended in 1993, the BLM collected and reiterated all of the segregation rules stated throughout the BLM regulations, including the 270-day segregation rules pertaining to the proposed BLM section 203 sales (43 CFR 2091.2–1(b)).

In general, the Administrative Procedure Act (APA) requires that federal agencies give notice and provide an opportunity for the public to comment whenever they propose a regulation or an amendment. However, unless precluded by statute, the APA allows exemptions from its notice and comment requirement for ''interpretive rules, general statements of policy or rules of agency organization, procedure, or practice'' (5 U.S.C. 553(b)(3). The exception applies in this instance because this final rule amends the segregation rules that are part of the procedure for BLM sales (43 CFR 2711.1–2). Correspondingly, this final rule, being procedural in nature, likewise qualifies as a categorical exclusion, which exempts the rule from certain requirements of the National Environmental Policy Act (NEPA). See 42 U.S.C. 4332(C); 40 CFR 1508.4.

II. Discussion of the Final Rule

When public lands are to be offered for sale, pursuant to FLPMA section 203, the BLM must publish a Notice of Realty Action (NORA) in the **Federal Register** and send the NORA to interested parties within 60 days prior to the sale (43 CFR 2711.1–2(a)). The notice also provides for a 45-day comment period on the proposed public land sale. The existing regulation states that when the NORA is published in the **Federal Register**, the lands proposed for sale are segregated from appropriation under the public land and mineral laws for a term not to exceed 270 days (43 CFR 2711.1–2(d) and 2091.2–1(b)).

FLPMA does not provide expressly for a segregation period in conjunction with a FLPMA section 203 sale (43 U.S.C. 1713). However, when the sale regulations were amended in 1984, the BLM added a segregation provision, limited to maximum duration of 270 days. The 270-day period has continued in effect since that time.

The existing 270-day limit on segregation of public lands proposed for FLPMA section 203 sales makes it difficult for BLM to fulfill all steps associated with a sale in BLM's normal course of business. Providing the BLM additional time would allow, in the normal course of business: (i) The research and documentation needed to ensure that a proposed sale is in compliance with planning as well as a variety of other requirements; (ii) the opportunity to respond to the comments of the public and interested parties; and (iii) the leeway to consider and resolve any protests lodged by the public or interested parties regarding a proposed sale. The BLM is, therefore, publishing this final rule to enlarge the period of time needed for segregation to meet these objectives.

This final rule will allow a BLM State Director to extend, if deemed necessary in that official's judgment, the duration of a period of segregation for up to a maximum of two additional years on a case-by-case basis. Finally, the rule amends the BLM's segregation regulations in 43 CFR part 2091 to be consistent with the changes this rule makes relative to the FLPMA section 203 public land sale regulations in 43 CFR part 2710.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review: Clarity of the Regulations.

This final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866. The final rule simply allows the BLM needed additional time to process FLPMA section 203 public land sale actions by extending the segregation period

relative to such sales. Therefore, this final rule does not require an assessment of potential benefits and costs, nor does it require an explanation pertaining to the manner in which the regulatory action is consistent with a statutory mandate. To the extent allowed by law, this final rule promotes the President's priorities and avoids undue interference with state, local, and tribal governments in the exercise of their governmental functions. This rule is not a ''significant regulatory action''; therefore, the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612) as amended, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The BLM has determined that this final rule, revising CFR 2091.2–1(b) and 2711.1–2(d) to provide for a longer segregation period of lands being considered for public sales under the FLPMA section 203, will not have a significant economic impact on a substantial number of small entities under the RFA.

As stated above in the preamble, this final rule only enlarges the segregation period so that the BLM has sufficient time to conduct the necessary reviews and other administrative actions in the normal course of business. Small entities could actually gain an advantage under this final rule because it allows additional time for their comments on proposed sales to be fully considered.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2) because it will not have an annual effect on the economy greater than $100 million, nor will it result in major cost or price increases for consumers, industries, government agencies, or regions. This final rule will not increase the costs for any entities having an interest in the sale of the Federal land because new procedures are not being added. The BLM is only increasing the time provided for the segregation of lands being considered for sale to ensure that all applicable requirements and procedures are completed properly in the normal course of business. The new rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The new rule may actually provide a reduction in costs to consumers and others because the BLM will have more time to provide input into a proposed sale decision, thus eliminating the need for extra staffing, or overtime that could otherwise be required to meet the deadlines under the existing (former) regulations.

Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532), the BLM must prepare a budgetary impact statement to accompany any proposed rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. We expect the estimated costs to States, local, or tribal governments will remain the same, and may be reduced in some instances by reducing potential overtime costs or other costs necessary to provide pertinent data within the existing timeframes. Therefore, this final rule is revising 43 CFR 2091.2–1(b) to provide a longer segregation period for lands being considered for public sales under section 203 of FLPMA and will not result in any unfunded mandates.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12630, the BLM has found that this final rule does not have significant takings implications. The revision of 43 CFR 2711.1–2(d) will merely provide a longer segregation period for lands being considered for public sales under FLPMA section 203. No takings of personal or real property will occur as a result of this final rule. A takings implication analysis is not required.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have 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. The rule does not preempt state law.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM finds that this rule will not result in significant changes to BLM policy and that Tribal Governments will not be unduly affected by this rule. This rulemaking has no bearing on trust lands, or on lands for which title is held in fee status by Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The BLM has determined that this rulemaking does not contain any new information collection which the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

National Environmental Policy Act

The BLM has determined that this final rule addresses procedural matters, and the FLPMA section 203 sales themselves represent the culmination of a planning process that fulfills BLM's NEPA obligations (43 CFR 2710.0–6(a) and 43 CFR 1600—Planning). Therefore, this final rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, this final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior (516 DM 2.3 A(1)), the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that

this final rule is administrative in content, involving only procedural changes addressing time constraints. This final rule does not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

Executive Order 13211, Effects on the Nation's Energy Supply (Executive Order 13211)

This final rule is a purely administrative regulatory action and has no implications under Executive Order 13211.

Executive Order 12866, Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the final regulations clearly stated?

2. Do the final regulations contain technical language or jargon that interferes with clarity?

3. Does the format of the final regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

4. Would the final regulations be easier to understand if they were divided into more (but shorter) sections?

5. Is the description of the final regulation in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in making the final regulation easier to understand?

Please send any written comments you have on the clarity of these regulations to the address specified above in the **ADDRESSES** section.

List of Subjects

43 CFR Part 2091

Administrative practices and procedures, Segregation and opening of lands

43 CFR Part 2710

Administrative practices and procedures, Public lands—mineral resources, and Public lands—sale.

Dated: November 3, 2006.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

■ Accordingly, for the reasons stated in the preamble and under the authority of the FLPMA (43 U.S.C. 1740), the BLM amends § § 2091.2–1(b) and revises 2711.1–2(d), Title 43 of the Code of Federal Regulations as set forth below:

PART 2090—SPECIAL LAWS AND RULES

■ 1. Revise the authority citation for part 2090 to read as follows:

Authority: 43 U.S.C. 1740.

■ 2. Amend § 2091.2–1(b) by adding two sentences at the end of paragraph (b) to read as follows:

§ 2091.2–1 Segregation.

* * * * *

(b) * * * The sales provisions of section 43 CFR 2711.1–2(d) provide for a segregation period, not to exceed two years unless, on a case-by-case basis, the BLM State Director determines that the extension is necessary and documents, in writing, why the extension is needed. Such an extension will not be renewable and cannot be extended beyond the additional two years.

PART 2710—SALES; FEDERAL LAND POLICY AND MANAGEMENT ACT

■ 3. Revise the authority citation for part 2710 to read as follows:

Authority: 43 U.S.C. 1740.

■ 4. Revise § 2711.1–2(d) to read as follows:

§ 2711.1–2 Notice of realty action.

* * * * *

(d) The publication of the notice of realty action in the **Federal Register** segregates the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application will not be accepted, will not be considered as filed, and will be returned to the applicant if the notice segregates from the use applied for in the application. The segregative effect of the notice of realty action terminates: (i) Upon issuance of a patent or other document of conveyance to such lands; (ii) upon publication in the **Federal Register** of a termination of the segregation; or (iii) at the end of the specified segregation period, whichever occurs first. The segregation period may not exceed two years unless, on a case-by-case basis, the BLM State Director determines that the extension is necessary and documents, in writing, why the extension is needed. Such an extension will not be renewable and cannot be extended beyond the additional two years. If an extension is deemed necessary, the BLM will publish a notice following the same procedure as that stated in paragraph (c) of this section.

* * * * *

[FR Doc. E6–19502 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division

Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Licking County, Ohio and Incorporated Areas Docket Nos.: FEMA–B–7454 and B–7462			
Beaver Run	Approximately 200 feet downstream of State Route 79	+869	Licking County (Unincorporated Areas).
	Approximately 400 feet downstream of Canyon Road	+886	Village of Hebron.
Bell Run	Approximately 800 feet downstream of U.S. Route 40	+897	Licking County (Unincorporated Areas).
	Just downstream of Refugee Road	+903	
Buckeye Lake		+893	Licking County (Unincorporated Areas), Village of Buckeye Lake.
Clear Run	Approximately 2,000 feet downstream of Newark-Granville Road.	+902	Licking County (Unincorporated Areas), Village of Granville.
	Approximately at State Route 661	+966	
Heath Lateral B	Approximately 160 feet upstream of Franklin Avenue	+838	City of Heath, City of Newark.
	Approximately 320 feet upstream of State Route 13	+866	
Heath Lateral C	Approximately 400 feet downstream of 30th Street	+844	City of Heath.
	Approximately 6,336 feet upstream of State Route 79	+876	
Heath Lateral D	Just upstream of Irving Wick Drive East	+908	Licking County (Unincorporated Areas).
	Approximately 1,890 feet upstream of Irving Wick Drive East	+936	City of Heath.
Heath Lateral E	Just downstream of State Route 79	+862	Licking County (Unincorporated Areas).
	Approximately 1,250 feet downstream of Conrail Railroad	+894	City of Heath.
Heath Lateral EA	Approximately at confluence with Heath Lateral E	+885	Licking County (Unincorporated Areas).
	Approximately 3,600 feet upstream of confluence with Heath Lateral E.	+891	City of Heath.
Heath Lateral F	Approximately 320 feet downstream of confluence with Heath Lateral FA.	+877	City of Heath.
	Approximately 1,140 feet upstream of confluence with Heath Lateral FA.	+886	
Heath Lateral FA	Approximately 60 feet upstream of confluence with Heath Lateral F.	+878	City of Heath.
	Approximately 2,380 feet upstream of confluence with Heath Lateral F.	+895	
Hebron Tributary	Approximately 900 feet downstream of State Route 79	+877	Licking County (Unincorporated Areas).
	Just downstream of Cumberland Street	+888	Village of Hebron.
Kiber Run	Approximately 5,100 feet downstream of Mink Street	+1,047	Licking County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 3,500 feet upstream of Mink Street	+1,073	Village of Johnstown.
Muddy Fork	Approximately 1,450 feet downstream of State Route 310	+980	Licking County (Unincorporated Areas).
	Approximately 1,800 feet upstream of Columbia Road	+1,024	City of Pataskala.
North Fork Licking River	Approximately 1,4000 feet upstream of Mt. Vernon Road	+890	Village of St. Louisville.
	Approximately 0.6 miles upstream of Mt. Vernon Road	+897	
Raccoon Creek	Approximately 1,600 feet downstream of CSX Railroad	+818	Licking County (Unincorporated Areas).
	Approximately of 1,100 feet upstream of State Route 37	+1,080	City of Newark, Village of Johnstown, Village of Alexandria, Village of Granville.
Ramp Creek	Approximately 850 feet downstream of Liberty Drive	+849	Licking County (Unincorporated Areas).
	Approximately 100 feet downstream of Thornwood Drive	+884	City of Heath.
Rocky Fork (Backwater from Licking River).	Approximately 200 feet upstream of Bridge Street	+792	Village of Hanover.
	Approximately 200 feet upstream of State Route 16	+792	
Sharon Valley Run	Approximately at Country Club Road	+876	Licking County (Unincorporated Areas).
	Approximately 300 feet downstream of Jones Road.	+940	City of Newark.
South Fork Licking River	Downstream side of State Route 13	+816	Licking County (Unincorporated Areas).
	Approximately 2,600 feet upstream of Mink Street Road	+1,095	City of Heath, City of Hebron, City of Newark, City of Pataskala.
South Fork Licking River	Approximately 0.7 miles upstream of Gale Road	+918	Village of Kirkersville.
	Approximately 1.0 miles downstream of York Road	+931	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Licking County (Unincorporated Areas)

Maps available for inspection at Licking County Administration Office, 20 South Second Street, Newark, Ohio 43055.

Village of Alexandria

Maps available for inspection at Village of Alexandria, 116 Granville Street, Alexandria, Ohio 43001.

Village of Buckeye Lake

Maps available for inspection at Buckeye Lake Village Office, 5192 Walnut Road, Buckeye Lake, Ohio 43008.

Village of Granville

Maps available for inspection at Jerry Turner/Bird and Bull Engineers & Surveyors, 2875 Dublin Granville Road, Columbus, Ohio 43235.

Village of Hanover

Maps available for inspection at Hanover Village Hall, 200 New Home Drive NE, Hanover, Ohio 43055.

Village of Hartford

Maps available for inspection at Hartford Village Town Hall, 2 North High Street, Croton, Ohio 43013.

City of Heath

Maps available for inspection at Heath Municipal Building, 1287 Hebron Road, Heath, Ohio 43056.

Village of Hebron

Maps available for inspection at Village of Hebron Zoning Department, Attention: Theresa Ours, 116 W. Main Street, Hebron, Ohio 43025.

Village of Johnstown

Maps available for inspection at Village of Johnstown, 599 South Main Street, Johnstown, Ohio 43031.

Village of Kirkersville

Maps available for inspection at Kirkersville Village Hall, 135 N 5th Street, Kirkersville, Ohio 43033.

City of Newark

Maps available for inspection at City of Newark Division of Engineering, 40 West Main Street, Newark, Ohio 43055.

City of Pataskala

Maps available for inspection at City of Pataskala Administration Office, 196 East Broad Street, Pataskala, Ohio 43062.

City of Reynoldsburg

Maps available for inspection at City of Reynoldsburg Municipal Building, 7232 East Main Street, Reynoldsburg, Ohio 43068.

Village of St Louisville

Maps available for inspection at Village of St. Louisville, 257 South Sugar Street, St. Louisville, Ohio 43071.

Village of Utica

Maps available for inspection at Village Administration Office, 39 Spring Street, Utica, Ohio 43080.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Warren County, Kentucky and Incorporated Areas Docket No.: FEMA–B–7463			
Sinkhole No. 2	At Media Drive	+464	City of Bowling Green.
Sinkhole No. 3	At Holly and Catherine Drives	+465	City of Bowling Green.
Sinkhole No. 4A	At Holly and Catherine Drives	+461	City of Bowling Green.
Sinkhole No. 4B	At Holly and Catherine Drives	+440	City of Bowling Green.
Sinkhole No. 7	At Boxwood Drive	+541	City of Bowling Green and Warren County (Unincorporated Areas).
Sinkhole No. 7A	At Boxwood Drive	+541	Warren County (Unincorporated Areas).
Sinkhole No. 14	At Wellington Way	+482	City of Bowling Green.
Sinkhole No. 21	At Canton Avenue	+523	City of Bowling Green.
Sinkhole No. 22	At Andrea Street	+529	City of Bowling Green.
Sinkhole No. 25A	At Pascoe Boulevard	+531	City of Bowling Green.
Sinkhole No. 33	At Rich Pond	+568	Warren County (Unincorporated Areas).
Sinkhole No. 39A	At Bogle Lane	+488	City of Bowling Green.
Sinkhole No. 39B	At Bogle Lane	+485	City of Bowling Green.

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

Maps are available for inspection at City-County Planning Commission of Warren County, 1141 State Street, Bowling Green, Kentucky.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 7, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–19528 Filed 11–17–06; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 71, No. 223
Monday, November 20, 2006

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Docket Number CN–04–001]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports, (2004 Amendments); Withdrawal of a Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws a proposed rule published in the **Federal Register** on January 12, 2005, (70 FR 2034), to amend the Cotton Board Rules and Regulations by adjusting the total rate of assessment per kilogram for imported cotton for use by the Cotton Research and Promotion Program. Based on a stakeholder comment, the Agricultural Marketing Service believes that the proposed rule may not achieve its intended objectives of effectiveness and efficiency.

DATES: The proposed rule is withdrawn as of November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Shethir Riva, Chief, Research and Promotion Program, Cotton Program, AMS, USDA, 1400 Independence Ave., SW., Stop 0224, Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or e-mail at *shethir.riva@usda.gov.*

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service (AMS) proposed to amend the Cotton Board Rules and Regulations by adjusting the total rate of assessment per kilogram for imported cotton collected for use by the Cotton Research and Promotion Program. The proposed rule would have reduced the total rate of assessment per kilogram for imported cotton products collected for use by the Cotton Research and Promotion Program.

The proposed rule was published in the **Federal Register** on January 12, 2005, at 70 FR 2034. Comments were to be received on or before March 14, 2005. In response to the proposed rule, AMS received one comment from the U.S. Association of Importers of Textiles and Apparel (USA–ITA). USA–ITA made numerous assertions, some relevant and some outside the scope of the proposed rule. Among them, the commenter advised AMS to reconsider the proposed formulation and do further work necessary to develop an assessment formula that would more accurately identify the amount of U.S. cotton contained in imported cotton products. AMS believes that the commenter's request to do further work has merit, and, therefore, AMS is withdrawing the proposed rule to continue to evaluate the importer assessment issue and garner additional stakeholders' input and economic data. Accordingly, the proposed rule at 70 FR 2034 in the January 12, 2005, issue in the **Federal Register** is hereby withdrawn.

Authority: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

Dated: November 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–19559 Filed 11–17–06; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–11]

Sally Shaw; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated June 23, 2006, which was filed with the Commission by Sally Shaw. The petition was docketed by the NRC on November 1, 2006, and has been assigned Docket No. PRM–51–11. The petitioner requests that the NRC prepare a rulemaking that will require that the NRC reconcile its generic environmental impact statement for nuclear power plant operating license renewal applications with the National Academy of Sciences Health Risks From Exposure to Low Levels of Ionizing Radiation: Biological Effects of Ionizing Radiation (BEIR) VII Phase 2 Report.

DATE: Submit comments by February 5, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on this petition by any one of the following methods. Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Please include PRM–51–11 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded

electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

A copy of the petition can be found in ADAMS under accession number ML061770056. A paper copy of the petition may be obtained by contacting Betty Golden, Office of Administration, Nuclear Regulatory Commission, Washington DC 20555–0001, telephone 301–415–6863, toll-free 1–800–368–5642, or by e-mail *bkg2@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7163 or toll-free: 1–800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

Entergy Nuclear Operations, Inc. (Entergy) submitted an application for renewal of Operating License No. DPR–28 for an additional 20 years of operation at the Vermont Yankee Nuclear Power Station (VYNPS). The VYNPS is located in the town of Vernon, Vermont, in Windham County on the west shore of the Connecticut River immediately upstream of the Vernon Hydroelectric Station. The operating license for VYNPS expires on March 21, 2012. A notice of receipt and availability of the application, which included the environmental report, was published in the **Federal Register** on February 6, 2006 (71 FR 6102). Subsequently, the NRC published a ''Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process'' on April 21, 2006 (71 FR 20733). The NRC will prepare an EIS related to the review of the license renewal application.

The applicable NRC regulation, 10 CFR 51.95(c), required that the NRC, in determining whether to grant a renewal of a nuclear power plant operating license, prepare an environmental impact statement (EIS). The regulation provides that this EIS supplement the NRC's baseline, generic EIS issued in 1996, NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (May 1996)(GEIS).

Petitioner's Request

The petitioner requests that the NRC prepare a rulemaking that would require that the NRC reconcile its GEIS for nuclear power plant operating license renewal applications with the National Academy of Sciences (NAS) Health Risks From Exposure to Low Levels of Ionizing Radiation: BEIR VII, Phase 2 which was released in 2005. The petitioner asserts that the GEIS relies upon an earlier NAS report, the BEIR V, with was released in 1990. According to the NAS Web site, the BEIR VII updates the information contained in the BEIR V and draws upon new data in both epidemiologic and experimental research.

The petitioner requests that NRC consider the NAS BEIR VII report as new and significant information and recalculate certain conclusions set forth in the GEIS, including early fatalities, latent fatalities and any injury projections based on this information.

Dated at Rockville, Maryland, this 14th day of November 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–19568 Filed 11–17–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24034; Directorate Identifier 2006–NE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines that were reassembled with previously used high pressure compressor (HPC) exit brush seal packs and new or refurbished HPC exit diffuser air seal lands. That AD currently requires replacing the HPC exit inner and outer brush seal packs with new brush seal packs, or replacing the HPC exit brush seal assembly with a new HPC exit brush seal assembly. This proposed AD would require replacing the HPC exit inner and outer brush seal packs with new brush seal packs, using either original equipment manufactured (OEM) parts, or FAA-approved part manufacturer approval (PMA) equivalent parts. This proposed AD would also apply to engines reassembled with a PMA equivalent HPC exit inner and/or outer brush seal packs. This proposed AD results from a request to include PMA equivalent HPC exit inner and outer brush seal packs and to include the engines with PMA equivalent parts already installed, in the AD. We are proposing this AD to prevent uncontained engine failure, damage to the airplane, and injury to passengers.

DATES: We must receive any comments on this proposed AD by January 19, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *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.

Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503 for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5213; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your

comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–24034; Directorate Identifier 2006–NE–05–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition in person at the DMS Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On August 14, 2006, the FAA issued AD 2006–17–08, Amendment 39–14729 (71 FR 49335, August 23, 2006). That AD requires replacing the HPC exit inner and outer brush seal packs with new brush seal packs, or replacing the HPC exit brush seal assembly with a new HPC exit brush seal assembly. That AD was the result of a report of oil leaking into the high pressure turbine (HPT) interstage cavity and igniting, leading to an engine case penetration and engine in-flight shutdown. That condition, if not corrected, could result in uncontained engine failure, damage to the airplane, and injury to passengers.

Actions Since AD 2006–17–08 Was Issued

Since AD 2006–17–08 was issued, an air carrier requested the use of PMA equivalent parts to be included in the AD. We agree. The proposed AD now also applies to engines reassembled with PMA equivalent HPC exit inner and/or outer brush seal packs installed, and allows installation of PMA equivalent HPC exit inner and outer brush seal packs for compliance to the requirements of the AD.

Also since AD 2006–17–08 was issued, we determined that the requirement in paragraph (g) of that AD, of replacing the HPC exit brush seal assembly with a new HPC exit brush seal assembly, is an option for the operators to demonstrate compliance to this proposed AD. Replacing the HPC exit inner and outer brush seal packs instead, is expected to be more economical for operators.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require replacing the OEM or PMA equivalent HPC exit inner and outer brush seal packs, with OEM or PMA equivalent new brush seal packs. Instructions on replacing these parts can be found in Pratt & Whitney Service Bulletin No. PW4G–112–A72–280, Revision 2, or Engine Overhaul Manual.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

We estimate that this proposed AD would affect 76 Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 9 work-hours per engine to perform the proposed parts replacement, and that the average labor rate is $80 per work-hour. Required parts would cost about $99,990 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $7,653,950.

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14729 (71 FR 49335, August 23, 2006) and by adding a new airworthiness directive, Amendment 39–XXXXX, to read as follows:

Pratt & Whitney: Docket No. FAA–2006–24034; Directorate Identifier 2006–NE–05–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 19, 2007.

Affected ADs

(b) This AD supersedes AD 2006–17–08, Amendment 39–14729.

Applicability

(c) This AD applies to Pratt & Whitney PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engines that were:

(1) Reassembled with a previously used original equipment manufacturer (OEM) or part manufacturer approval (PMA) equivalent high pressure compressor (HPC) exit inner brush seal pack; and

(2) Reassembled with a new or refurbished OEM or PMA equivalent HPC exit diffuser air seal inner land.

(d) These engines are installed on, but not limited to, Boeing 777 airplanes.

Unsafe Condition

(e) This AD results from a request to include PMA equivalent HPC exit inner and outer brush seal packs and to include the engines with PMA equivalent parts already installed, in the AD. We are issuing this AD to prevent uncontained engine failure, damage to the airplane, and injury to passengers.

Compliance

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

(g) Replace the HPC exit inner and outer brush seal packs with OEM or FAA-approved PMA equivalent new HPC exit inner and outer brush seal packs as follows:

(1) By 3,000 cycles-in-service (CIS) since a used HPC exit inner brush seal pack and a new or refurbished HPC exit diffuser air seal land were installed in the engine, or by March 31, 2007, whichever occurs later; however

(2) If on March 31, 2007, the used HPC exit inner brush seal pack coupled with a new or refurbished HPC exit diffuser air seal inner land assembly has not accumulated 3,000 CIS, then by 3,000 CIS, or December 31, 2008, whichever occurs first.

(h) Information on replacing HPC exit inner and outer brush seal packs can be found in the Pratt & Whitney Alert Service Bulletin No. PW4G–112–A72–280, Revision 2, dated October 2, 2006, and in the engine overhaul manual.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Pratt & Whitney Alert Service Bulletin No. PW4G–112–A72–280, Revision 2, dated October 2, 2006, also pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on November 14, 2006.

Mark Rumizen,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–19536 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26356; Directorate Identifier 2006–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all EMBRAER Model ERJ 170 and ERJ 190 airplanes. This proposed AD would require repetitive detailed inspections for blockage of the pitot drain holes of certain air data smart probes (ADSPs), removing accumulated moisture from the pneumatic passages of the ADSPs, related investigative actions, and corrective actions if necessary. This proposed AD results from reports of erroneous air speed indications caused by blockage of the pitot sensors due to freezing of accumulated moisture in the ADSP pneumatic passages. We are proposing this AD to prevent an erroneous air speed indication, which could reduce flightcrew ability to control the airplane.

DATES: We must receive comments on this proposed AD by December 20, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *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.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–26356; Directorate Identifier 2006–NM–166–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may 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 DOT

street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on EMBRAER Model ERJ 170 airplanes and Model ERJ 190 airplanes equipped with Rosemount Aerospace Model 2015G2H2H air data smart probes (ADSPs) having part number (P/N) 2015G2H2H–4( ), 2015G2H2H–5( ), 2015G2H2H–6( ), or 2015G2H2H–7( ). The ANAC advises that reports have been received of erroneous air speed indications caused by blockage of the sensors of the ADSP, due to freezing of accumulated moisture in the pneumatic passages between the ADSP pressure ports and sensors. This condition, if not corrected, could result in an erroneous air speed indication, which could reduce flightcrew ability to control the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–34–0007, dated April 28, 2005 (for Model ERJ 170 airplanes), and Service Bulletin 190–34–0003, dated December 2, 2005 (for Model ERJ 190 airplanes). The service bulletins describe procedures for repetitive detailed inspections for blockage of the pitot drain holes of certain air data smart probes (ADSPs), removing accumulated moisture from the pneumatic passages of the ADSPs, related investigative actions, and corrective actions if necessary. Related investigative actions include inspecting for damage to the ADSP seal gaskets, and verifying proper gap and step distance between the access panel/fuselage and between the access panel/base of the ADSP. Corrective actions include replacing any damaged seal gaskets with new gasket material and adjusting any gap and step discrepancies.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The ANAC mandated the service information and issued Brazilian airworthiness directives 2006–05–05, effective June 14, 2006, and 2006–05–08, effective June 19, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

EMBRAER Service Bulletins 170–34–0007 and 190–34–0003 also refer to Rosemount Aerospace Service Bulletin 2015G2H2H–34–04, Revision 1, dated April 6, 2005, as an additional source of service information for accomplishing the requirements of the proposed AD.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined the ANAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletins.''

Difference Between the Proposed AD and Service Bulletins

The service bulletins specify an inspection; however, this proposed AD would require a detailed inspection, which conforms to the Brazilian airworthiness directives. Note 3 of the proposed AD defines this type of inspection.

Costs of Compliance

This proposed AD would affect about 93 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $14,880, or $160 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–26356; Directorate Identifier 2006–NM–166–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes, and Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of erroneous air speed indications caused by blockage of the pitot sensors due to freezing of accumulated moisture in the air data smart probes (ADSP) pneumatic passages. We are issuing this AD to prevent an erroneous air speed indication, which could reduce flightcrew ability to control 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.

Inspect To Determine Part Number (P/N) of ADSPs

(f) Within 600 flight hours after the effective date of this AD, inspect to determine the part number of the ADSPs. For any Rosemount Aerospace ADSP having P/N 2015G2H2H–4( ), 2015G2H2H–5( ), 2015G2H2H–6( ), or 2015G2H2H–7 ( ), do the applicable actions required by this AD. For any ADSP having any other part number, no further action is required by this AD.

Note 1: The parentheses used in the identified ADSP model part numbers indicate the presence or absence of an additional letter(s), which varies with the basic ADSP model designation. The letter(s) defines minor changes that do not affect interchangeability or eligibility of the ADSP. Therefore, this AD still applies regardless of the presence or absence of these letters on the ADSP model designation.

Detailed Inspection, Moisture Removal, and Related Investigative/Corrective Actions

(g) Within 600 flight hours after the effective date of this AD, perform a detailed inspection for blockage of the pitot drain holes of the ADSP, remove accumulated moisture from the pneumatic passages of the ADSP, and, before further flight, do all related investigative actions and applicable corrective actions. Perform all required actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–34–0007, dated April 28, 2005 (for Model ERJ 170 airplanes), or EMBRAER Service Bulletin 190–34–0003, dated December 2, 2005 (for Model ERJ 190 airplanes), as applicable. Repeat all required actions thereafter at intervals not to exceed 600 flight hours.

Note 2: EMBRAER Service Bulletins 170–34–0007 and 190–34–0003 refer to Rosemount Aerospace Service Bulletin 2015G2H2H–34–04, Revision 1, dated April 6, 2005, as an additional source of service information for accomplishing the required actions.

Note 3: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) Brazilian airworthiness directives 2006–05–05, effective June 14, 2006, and 2006–05–08, effective June 19, 2006, also address the subject of this AD.

Issued in Renton, Washington, on November 8, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19532 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26355; Directorate Identifier 2006–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0070 and 0100 airplanes. This proposed AD would require a one-time inspection of the fuel lines located in the left and right main landing gear (MLG) bays to determine the clearance between the fuel and hydraulic lines. If necessary, this proposed AD would also require an inspection of fuel lines for chafing, replacement of a chafed fuel line with a new fuel line, and the repositioning of existing clamps and installation of additional clamps between the fuel and hydraulic lines. This proposed AD results from a fuel leak found in the left MLG bay. We are proposing this AD to detect and correct inadequate clearance between fuel and hydraulic lines in the MLG bay, which could lead to chafing of a fuel line and fuel leakage. A fuel leak near hot brakes could result in a fire in the MLG bay.

DATES: We must receive comments on this proposed AD by December 20, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *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.

Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–26355; Directorate Identifier 2006–NM–198–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may 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 DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 airplanes. The CAA–NL advises that a fuel leak was found in the left main landing gear (MLG) bay, on a Fokker Model F.28 Mark 0100 airplane. Investigation revealed that inadequate clearance between the fuel and hydraulic lines in the MLG bay led to chafing of the fuel line and consequent fuel leakage. A fuel leak near hot brakes, if not corrected, could result in a fire in the MLG bay.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–28–041, dated July 20, 2005. The service bulletin describes procedures for a one-time inspection of the fuel lines located in the left and right MLG bays to determine the clearance between the fuel and hydraulic lines. If the clearance is less than 3 mm (millimeters), the service bulletin specifies inspecting the fuel line for chafing and doing corrective actions as necessary. If no chafing is found, the corrective action is to reposition the existing clamps and install additional clamps to obtain a minimum clearance of 3 mm between the fuel and hydraulic lines, as necessary. If chafing is found, the corrective actions are (1) To replace the chafed fuel line with a new fuel line and (2) to reposition the existing clamps and install additional clamps to obtain a minimum clearance of 3 mm between the fuel and hydraulic lines, as necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive NL–2005–010 R1, dated September 7, 2005, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

The ''inspection'' specified in the Fokker service bulletin is referred to as a ''general visual inspection'' in this proposed AD. We have included the definition for a general visual inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 9 airplanes of U.S. registry. The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $720, or $80 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2006–26355; Directorate Identifier 2006–NM–198–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a fuel leak found in the left main landing gear (MLG) bay. We are issuing this AD to detect and correct inadequate clearance between fuel and hydraulic lines in the MLG bay, which could lead to chafing of a fuel line and fuel leakage. A fuel leak near hot brakes could result in a fire in the MLG bay.

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.

Inspections for Clearance and Chafing

(f) Within 6 months after the effective date of this AD, do a general visual inspection of the fuel lines located in the left and right MLG bays to determine the clearance between the fuel and hydraulic lines, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–041, dated July 20, 2005. If the clearance of a fuel line is 3 mm (millimeters) or more, no further action is required by this AD for that fuel line only. If the clearance of a fuel line is less than 3 mm, before further flight, do a general visual inspection of the fuel line for chafing in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

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.''

Corrective Actions

(g) If the fuel line is found chafed during the inspection for chafing specified in paragraph (f) of this AD, before further flight after that inspection, do the actions in paragraphs (g)(1) and (g)(2) of this AD. If the fuel line is not found chafed, within 6 months after the inspection for chafing, do the actions in paragraph (g)(2) of this AD.

(1) Replace the chafed fuel line with a new fuel line in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–041, dated July 20, 2005.

(2) Reposition the existing clamps and install additional clamps to obtain a minimum clearance of 3 mm between the fuel and hydraulic lines, as applicable, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–041, dated July 20, 2005.

Alternative Methods of Compliance (AMOCs)

(h)(1) 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.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) Dutch airworthiness directive NL–2005–010 R1, dated September 7, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on November 8, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19538 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26353; Directorate Identifier 2006–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model CL–600–1A11 (CL–600) airplanes, CL–600–2A12 (CL–601) airplanes, and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes. This proposed AD would require inspecting to identify the part number and serial number of the selector valves of the nose landing gear (NLG) and the nose gear door; and doing related investigative and corrective actions if necessary. This proposed AD results from reports of uncommanded partial retractions of the NLG. We are proposing this AD to prevent internal leakage of the selector valve, which, under certain conditions, could result in an uncommanded retraction of the NLG with consequent damage to the airplane and possible serious injury to ground personnel.

DATES: We must receive comments on this proposed AD by December 20, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *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.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–26353; Directorate Identifier 2006–NM–189–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also

post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may 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 DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes. TCCA reports several cases of uncommanded retraction of the nose landing gear (NLG) of Model CL–600–2B19 airplanes caused by discrepant selector valves; the same selector valves may be installed on the airplanes identified in this proposed AD. (Further rulemaking will address the unsafe condition in Model CL–600–2B19 airplanes.) Investigation revealed that the end caps of certain NLG and nose gear door selector valves may have been incorrectly lock-wired or improperly torqued during manufacture. This could allow the valve end cap to back off and damage the valve seal, resulting in internal leakage of the valve. Such internal leakage, under certain conditions, could result in an uncommanded retraction of the NLG with consequent damage to the airplane and possible serious injury to ground personnel. Certain conditions involve the transfer or removal of electrical power from the airplane on the ground before the NLG safety pin is installed, when any pressure, including residual pressure, is present in the No. 3 hydraulic system.

Operators should be aware that selector valves having Bombardier P/N 601R75146–1, which are the subject of this proposed AD, may be supplied by different manufacturers and have different manufacturer part numbers. Only selector valves manufactured by Tactair Fluid Controls, having P/N 750006000, would be affected by this proposed AD.

Relevant Service Information

Bombardier has issued the service bulletins identified in the following table.

BOMBARDIER SERVICE BULLETINS

Service Bulletin	Revision level	Date
600–0721 (for Model CL–600–1A11 (CL–600) airplanes)	01	February 20, 2006.
601–0558 (for Model CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes)	01	February 20, 2006.
604–32–021 (for Model CL–600–2B16 (CL–604) airplanes)	01	February 20, 2006.

The service bulletins describe procedures for inspecting for certain S/Ns of the selector valves of the NLG and the nose gear door, and doing related investigative and corrective actions if necessary. Related investigative actions include checking for proper installation of the lock wire of the end cap and verifying the torqued value of the end cap. Corrective actions include ensuring that any selector valve that has a properly installed lock wire and properly torqued end cap is marked with a new manufacturer part number and replacing any discrepant selector valve with a new or serviceable selector valve marked with the correct part number. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2006–16, dated July 6, 2006, to ensure the continued airworthiness of these airplanes in Canada.

The Bombardier service bulletins refer to Tactair Fluid Controls Service Bulletin SB750006000–1, Revision A, dated September 6, 2005, as an additional source of service information for doing the related investigative and corrective actions previously described.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

The service bulletins specify checking for proper installation of the lock wire; however, we have determined that this check should be a ''general visual'' inspection. We have included a definition of this type of inspection in Note 2 of this proposed AD.

Costs of Compliance

This proposed AD would affect about 492 airplanes of U.S. registry.

The inspection to determine the manufacturer P/N and S/N of the selector valve(s) would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $39,360, or $80 per airplane.

The general visual inspection of the selector valve(s), if accomplished, would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $80 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2006–26353; Directorate Identifier 2006–NM–189–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–1A11 (CL–600) airplanes, CL–600–2A12 (CL–601) airplanes, and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes; certificated in any category; having serial numbers (S/Ns) as identified in the service bulletins specified in Table 1 of this AD, as applicable.

TABLE 1.—BOMBARDIER SERVICE BULLETINS

Service Bulletin	Revision level	Date
600–0721 (for Model CL–600–1A11 (CL–600) airplanes)	01	February 20, 2006.
601–0558 (for Model CL–600–2A12 (CL–601) airplanes, and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes).	01	February 20, 2006.
604–32–021 (for Model CL–600–2B16 (CL–604) airplanes)	01	February 20, 2006.

Unsafe Condition

(d) This AD results from reports of uncommanded partial retractions of the nose landing gear (NLG). We are issuing this AD to prevent internal leakage of the selector valve, which, under certain conditions, could result in an uncommanded retraction of the NLG with consequent damage to the airplane and possible serious injury to ground personnel.

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 Corrective Actions

(f) Within 500 flight hours or 12 months after the effective date of this AD, whichever occurs first, inspect to determine the manufacturer part number (P/N) and S/N of the selector valves of the NLG and nose gear door. A review of airplane maintenance records is acceptable in lieu of this inspection if the S/Ns of the selector valves can be conclusively determined from that review. For any subject selector valve having Tactair Fluid Controls P/N 750006000 and a S/N from 0001 through 0767 inclusive, before further flight, do related investigative (including a general visual inspection for proper installation of the lock wire of the end cap) and corrective actions; in accordance with the applicable service bulletins identified in Table 1 of this AD.

Note 1: Operators should be aware that selector valves having Bombardier P/N 601R75146–1 may be supplied by different manufacturers and have different manufacturer part numbers. Only airplanes having selector valves manufactured by Tactair Fluid Controls, having P/N 750006000, are subject to the investigative and corrective actions specified in paragraph (f) of this AD.

Note 2: 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.''

Note 3: The service bulletins identified in Table 1 of this AD refer to Tactair Fluid Controls Service Bulletin SB750006000–1, Revision A, dated September 6, 2005, as an additional source of service information for doing the related investigative and corrective actions required by this AD.

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane a subject selector valve having a S/N from 0001 through 0767 inclusive, unless that selector valve meets the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA

Flight Standards Certificate Holding District Office.

Related Information

(i) Canadian airworthiness directive CF–2006–16, dated July 6, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on November 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19539 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26354; Directorate Identifier 2006–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This proposed AD would require replacing the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with non-conductive hoses. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

DATES: We must receive comments on this proposed AD by December 20, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *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.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–26354; Directorate Identifier 2006–NM–196–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may 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 DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to

reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The ANAC advises that sparking may occur between wires of the vent and pilot valves of the pressure refueling system inside the wing fuel tanks and the metallic tubes enclosing the wires. This condition, if not corrected, could provide an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletins 145–28–0023, Revision 05, dated May 15, 2006 (for Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes), and 145LEG–28–0018, Revision 01, dated April 20, 2005 (for Model EMB–135BJ airplanes). The service bulletins describe procedures for replacing the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with non-conductive hoses. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The ANAC mandated the service information and issued Brazilian airworthiness directive 2006–06–02, dated June 28, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined ANAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 620 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts would cost between $1,121 and $1,796 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $744,620, and $1,163,120, or between $1,201 and $1,876 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–26354; Directorate Identifier 2006–NM–196–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category; as identified in EMBRAER Service Bulletins 145–28–0023, Revision 05, dated May 15, 2006, and 145LEG–28–0018, Revision 01, dated April 20, 2005.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss 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.

Tube Replacement

(f) Within 5,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, replace the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with new, improved, non-conductive hoses, in accordance with the Accomplishment Instructions of the service bulletin specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes: EMBRAER Service Bulletin 145–28–0023, Revision 05, dated May 15, 2006.

(2) For Model EMB–135BJ airplanes: EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005.

Credit for Actions Accomplished Using Prior Revisions of Service Information

(g) Actions accomplished before the effective date of this AD in accordance with the service information specified in Table 1 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1.—EMBRAER SERVICE INFORMATION

Service Bulletin	Revision level	Dated
145–28–0023	04	November 7, 2005.
145–28–0023	03	April 27, 2005.
145–28–0023	02	November 8, 2004.
145–28–0023	01	June 9, 2004.
145–28–0023	Original	April 19, 2004.
145LEG–28–0018	Original	April 23, 2004.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, ANM–116, International Branch, 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.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) Brazilian airworthiness directive 2006–06–02, dated June 28, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on November 8, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19540 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26191; Directorate Identifier 2006–CE–60–AD]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an excessive lateral play caused by a nonconforming washer might lead to the deterioration of the elevator trim tab bearing fatigue resistance. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 20, 2006.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26191; Directorate Identifier 2006–CE–60–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this

proposed AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Direction générale de l'aviation civile (DGAC), which is the aviation authority for France, has issued French AD No F–2006–028, dated February 1, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states an excessive lateral play caused by a nonconforming washer might lead to the deterioration of the elevator trim tab bearing fatigue resistance. If not corrected, lateral play could generate deterioration of bearing fatigue life. The MCAI requires a check for absence of play and installation, if necessary, of a setting washer. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EADS SOCATA has issued TBM Aircraft Mandatory Service Bulletin SB 70–135, ATA No. 55, dated December 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 52 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $500 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $34,320, or $660 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

EADS SOCATA: Docket No. FAA–2006–26191; Directorate Identifier 2006–CE–60–AD.

Comments Due Date

(a) We must receive comments by December 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EADS SOCATA TBM 700 airplanes, serial numbers 271 through 328, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states an excessive lateral play caused by a nonconforming washer might lead to the deterioration of the elevator trim tab bearing fatigue resistance.

Actions and Compliance

(e) Unless already done, within the next 100 hours time-in-service (TIS) or 12 months, whichever occurs first, after the effective date of this AD, verify there is no lateral play for both elevator trim tabs and correct, as necessary, by installing a setting washer as instructed in the EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–135, ATA No. 55, dated December 2005.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

Compliance time is defined as within 100 hours TIS or 12 months whichever occurs first.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, *ATTN:* Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4119; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

Related Information

(g) Refer to MCAI Direction générale de l'aviation civile Airworthiness Directive No. F–2006–028, dated February 01, 2006; and EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–135, ATA No. 55, dated December 2005, for related information.

Issued in Kansas City, Missouri, on November 9, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19545 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 061005856–6256–01]

RIN 0691–AA61

International Services Surveys: BE–125, Quarterly Survey of Transactions in Selected Services and Intangible Assets With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for the BE–125, Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons. This rule would replace the rule for a similar but more limited survey, the BE–25, Quarterly Survey of Transactions with Unaffiliated Foreign Persons in Selected Services and in Intangible Assets. A new agency form number and survey title are being introduced because the survey program is being reconfigured to begin collection of data on transactions with affiliated foreigners using the same survey instruments as are used to collect information on transactions with unaffiliated foreigners and because services once collected on an annual basis would now be collected quarterly. This change will allow respondents to report transactions in services and intangible assets with foreign persons on one quarterly survey, rather than on as many as three different quarterly surveys and one annual survey. If adopted the BE–125 survey would be conducted quarterly beginning with the first quarter of 2007.

The proposed BE–125 survey data are used to update universe estimates from similar data reported on the BE–120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons and on the benchmark and quarterly direct investment surveys that were administered to collect data on transactions with affiliated foreign persons.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. January 19, 2007.

ADDRESSES: You may submit comments, identified by RIN 0691–AA61, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For agency, select ''Commerce Department—all.''
- *E-mail: Obie.Whichard@bea.gov.*
- *Fax:* Office of the Chief, International Investment Division, (202) 606–5318.
- *Mail:* Office of the Chief, International Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- *Hand Delivery/Courier:* Office of the Chief, International Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving, Section M100, 1441 L Street, NW., Washington, DC 20005.
- *Public Inspection:* Comments may be inspected at BEA's offices, 1441 L Street, NW., Room 7006, between 8:30 a.m. and 5 p.m., Eastern Time Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail *Obie.Whichard@bea.gov.*; or phone (202) 606–9890.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR part 801.9 to replace the reporting requirements for the BE–25, Quarterly Survey of Transactions with Unaffiliated Foreign Persons in Selected Services and in Intangible Assets, with requirements for the BE–125, Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Description of Changes

The proposed BE–125 survey would be a mandatory survey and would be conducted, beginning with transactions for the first quarter of 2007, by BEA under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' For the initial quarter of coverage, BEA would send the survey to potential respondents in March of 2007; responses would be due by May 15, 2007.

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users, to ensure that, as far as possible, the required data serve their intended purposes and are available from existing records, that instructions are clear, and that unreasonable burdens are not imposed. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (for example, whether the data are available on respondents' books), and BEA's experience in previous related annual and quarterly surveys.

If implemented, the BE–125 would collect all the same information as the BE–25, Quarterly Survey of

Transactions Between U.S. and Unaffiliated Foreign Persons in Selected Services and in Intangible Assets, but it would also include services transactions that BEA is currently collecting on the BE–22, Annual Survey of Selected Services Transactions Between U.S. and Unaffiliated Foreign Persons, and services transactions with affiliated parties (*i.e.*, with foreign affiliates, foreign parents, and foreign affiliates of foreign parents). In addition to discontinuing the BE–25, BEA also proposes to discontinue the BE–22 at the time the BE–125 is implemented. BEA is currently collecting information on the transactions with affiliated parties on its quarterly direct investment surveys (the BE–577, Direct Transactions of U.S. Reporter with Foreign Affiliate, the BE–605, Transactions of U.S. Affiliate, except a U.S. Banking Affiliate, with Foreign Parent, and the BE–605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent). These transactions with affiliated parties that are collected on BEA's quarterly direct investment surveys would now be collected on the BE–125. In addition, the BE–125 would combine several services into one ''other selected services category'', which would include any services not individually covered by the survey or available from other sources.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, would conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA. The survey would provide a basis for updating estimates of the universe of transactions between U.S. and foreign persons in selected services and intangible assets. The data are needed to monitor trade in services and intangible assets; analyze their impact on the U.S. and foreign economies; compile and improve the U.S. international transactions, national income and product, and input–output accounts; support U.S. commercial policy on services and intangible assets; assess and promote U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federal assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The requirement will be submitted to OMB as a request for a revision of a currently approved collection under OMB control number 0608–0067.

Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The BE–125 quarterly survey, as proposed, is expected to result in the filing of reports containing mandatory data from approximately 1,000 respondents on a quarterly basis, or 4,000 annually. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average 16 hours per response (64 hours annually), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for the BE–125 survey is estimated at 64,000 hours, compared to 35,200 hours estimated for the previous BE–25 survey. The increase in burden is a result of three factors: More U.S. persons with transactions in international services, the addition of selected services transactions that were previously covered by the BE–22, annual survey of selected services transactions (9,200 burden hours), and the inclusion of transactions with affiliated foreign persons.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, fax: 202–606–5311; and the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0058, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov* or by fax at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international transactions in covered services or intangible assets tend to be relatively large, thereby excluding them from the definition of small entity. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The proposed BE–125 quarterly survey will be required from U.S. persons whose sales of covered services or intangible assets to foreign persons exceeded $6 million for the previous fiscal year or are expected to exceed of that amount during the current fiscal year, or whose purchases of covered services or intangible assets from foreign persons exceeded $4 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year. This amount is applied separately to each of the individual types of transactions covered by the survey. The exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction, often limited to

transactions with a single partner country; therefore, the burden on them should be small. In addition, BEA services surveys mailings are targeted mailings. Thus, since small businesses tend not to be involved in the transactions to be covered by the BE–125 survey, few small businesses should receive the survey. However, those receiving the survey are expected to incur a minimal burden in completing the exemption form.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: November 8, 2006.

Rosemary D. Marcuss,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p. 86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Amend § 801.9 by revising paragraph (c)(6) and removing and reserving paragraph (b)(2) to read as follows:

§ 801.9 Reports required.

(c) Quarterly surveys. * * *

(6) BE–125, Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons:

(i) A BE–125, Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons, will be conducted covering the first quarter of the 2007 calendar year and every quarter thereafter.

(A) *Who must report—(1) Mandatory reporting.* Reports are required from each U.S. person that: (a) Had sales of covered services or intangible assets to foreign persons that exceeded $6 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year; or (b) had purchases of covered services or intangible assets from foreign persons that exceeded $4 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) *Voluntary reporting.* Reports are requested from each U.S. person that had sales of covered services or intangible assets to foreign persons that were $6 million or less for the previous fiscal year and are expected to be less than or equal to that amount during the current fiscal year, or had purchases of covered services or intangible assets from foreign persons that were $4 million or less for the previous fiscal year and are expected to be less than or equal to that amount during the current fiscal year. Provision of this information is voluntary. The estimates may be based on recall, without conducting a detailed records search. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) Any person receiving a BE–125 survey form from BEA must complete all relevant parts of the form and return the form to BEA. A person that is not subject to the mandatory reporting requirement in paragraph (c)(6)(i)(A)(*1*) of this section and is not filing information on a voluntary basis must complete Parts 1 and 2 of the survey. This requirement is necessary to ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary follow-up contact.

(C) *Covered services and intangible assets.* The BE–125 survey is intended to collect information on U.S. international trade in all types of services and intangible assets for which information is not collected in other BEA surveys and is not available to BEA from other sources. The major types of services transactions not covered by the BE–125 survey are travel, transportation, insurance (except for purchases of primary insurance), financial services (except for purchases by non-financial firms), and expenditures by students and medical patients who are studying or seeking treatment in a country different from their country of residence. Covered services are: Advertising services; accounting, auditing, and bookkeeping services; auxiliary insurance services; computer and data processing services; construction services; data base and other information services; educational and training services; engineering, architectural, and surveying services; financial services (purchases only, by companies or parts of companies that are not financial services providers); industrial engineering services; industrial-type maintenance, installation, alteration, and training services; legal services; management, consulting, and public relations services (including allocated expenses); merchanting services (sales only); mining services; operational leasing services; other trade-related services; performing arts, sports, and other live performances, presentations, and events; premiums paid on purchases of primary insurance; losses recovered on purchases of primary insurance; research, development, and testing services; telecommunications services; and other selected services. ''Other selected services'' includes, but is not limited to: Agricultural services; account collection services; disbursements to fund news-gathering costs of broadcasters; disbursements to fund news-gathering costs of print media; disbursements to fund production costs of motion pictures; disbursements to fund production costs of broadcast program material other than news; disbursements to maintain government tourism and business promotion offices; disbursements for sales promotion and representation; disbursements to participate in foreign trade shows (purchases only); employment agencies and temporary help supply services; language translation services; mailing, reproduction, and commercial art; management of health care facilities; salvage services; satellite photography and remote sensing/satellite imagery services; security services; space transport (includes satellite launches, transport of goods and people for scientific experiments, and space passenger transport); transcription services; and waste treatment and depollution services. The intangible assets covered by the BE–125 survey are rights related to: Industrial processes and products; books, compact discs, audio tapes and other copyrighted material and intellectual property; trademarks, brand names, and signatures; performances and events pre-recorded on motion picture film and television tape, including digital recording; broadcast and recording of live performances and events; general use computer software; business format franchising fees; and other intangible assets, including indefeasible rights of users.

(ii) [Reserved]

[FR Doc. E6–19565 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU44

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Cirsium hydrophilum var. hydrophilum (Suisun thistle) and Cordylanthus mollis ssp. mollis (soft bird's-beak)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended Required Determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for two tidal marsh plants: *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak). We also announce the availability of the draft economic analysis for the proposed critical habitat designation and an amended Required Determinations section of the proposal. The draft economic analysis identifies potential costs will be $1.6 million in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $1.4 million over 20 years ($95,002 annually) at a 3 percent discount rate, or $1.2 million over 20 years ($116,722 annually) at a 7 percent discount rate. The amended Required Determinations section provides our determination concerning compliance with applicable statutes and Executive Orders that we have deferred until the information from the draft economic analysis of this proposal was available. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule, the associated draft economic analysis, and the amended Required Determinations section.

DATES: We will accept public comments until December 20, 2006.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

(1) *E-mail:* You may send comments by electronic mail (e-mail) to: suisunplantsCH@fws.gov. For directions on how to file comments electronically, see the ''Public Comments Solicited'' section.

(2) *Mail or hand delivery:* You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

(3) *Facsimile:* You may fax your comments to 916–414–6712.

(4) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address listed in **ADDRESSES** (telephone 916–414–6600; facsimile 916–414–6712). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* published in the **Federal Register** on April 11, 2006 (71 FR 18456) and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat, as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of exclusion outweigh the benefits of including such area as part of critical habitat;

(2) Specific information on the amount and distribution of *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis,* and what habitat is essential to the conservation of these plants and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed habitat;

(4) Information on the extent to which any State and local environmental protection measures referred to in the draft economic analysis may have been adopted largely as a result of the listing of *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis;*

(5) Information on whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(6) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(8) Information on areas that could potentially be disproportionately impacted by designation of critical habitat for *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis;*

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; the reasons why our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(10) Information on whether the draft economic analysis appropriately identifies all costs that could result from the designation; and

(11) Information on whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

Pursuant to section 4(b)(2) of the Act, an area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

All previous comments and information submitted during the initial comment period on the April 11, 2006, proposed rule (71 FR 18456) need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. On the basis of public comment on this analysis, the critical habitat proposal, and the final economic

analysis, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

If submitting comments electronically, please also include ''*Attn:* RIN 1018–AU44'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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 names and home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

You may obtain copies of the proposed rule and draft economic analysis by mail from the Sacramento Fish and Wildlife Office at the address listed under **ADDRESSES** or by visiting our Web site at *http://www.fws.gov/sacramento/.*

Background

We published a proposed rule to designate critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* on April 11, 2006 (71 FR 18456). Because the proposed critical habitat partially overlaps between the two species, the proposed critical habitat totaled approximately 2,726 acres (ac) (1,103 hectares (ha)) in Solano, Contra Costa, and Napa counties, California. In a June 14, 2004, settlement agreement, we agreed to submit for publication in the **Federal Register** a final critical habitat designation for these plants on or before April 1, 2007.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the April 11, 2006, proposed rule to designate critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* (71 FR 18456), we have prepared a draft economic analysis of the proposed critical habitat designation.

The current draft economic analysis estimates the foreseeable potential economic impacts of the proposed critical habitat designation and other conservation-related actions for these species on government agencies and private businesses and individuals. The economic analysis identifies potential costs will be $1.6 million in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $1.4 million over 20 years ($95,002 annually) at a 3 percent discount rate, or $1.2 million over 20 years ($116,722 annually) at a 7 percent discount rate.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis,* including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* in essential habitat areas. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date these species were listed as endangered (November 20, 1997; 62 FR 61916) and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal or its supporting documents to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our April 11, 2006 proposed rule (71 FR 18456), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order 13132 and Executive Order 12988; the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments (59 FR 22951). Based on

the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 13211, Executive Order 12630, and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis,* costs related to conservation activities for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $1.6 million (undiscounted) over 20 years. Discounted future costs are estimated to be $1.4 million over 20 years ($95,002 annually) at a 3 percent discount rate, or $1.2 million over 20 years ($116,722 annually) at a 7 percent discount rate. Therefore, based on our draft economic analysis, it is not anticipated that the proposed designation of critical habitat for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* would result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments received, this determination is subject to revision as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Cirsium hydrophilum var. hydrophilum* and *Cordylanthus mollis* ssp. *mollis* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* and proposed designation of its critical habitat. The small business entities that may be affected include a private non-profit land conservation organization and a private ranch. The draft economic assessment does not project significant impacts to either entity because one business has unknown revenue with effects of the proposed habitat designation likely being negligible. The other business would potentially face annualized costs worth only 0.32 percent of annual revenues. As such, we do not anticipate that this proposed regulation will result in a significant impact to a substantial number of small business entities.

Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply,

distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* is considered a significant regulatory action under Executive Order 12866 due to it potentially raising novel legal and policy issues. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on the information in the draft economic analysis, energy-related impacts associated with *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis,* the impacts on nonprofits and small governments are expected to be small. There is no record of consultations between the Service and any of these governments since *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* were listed as endangered on November 20, 1997 (62 FR 61916). It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Sacramento Fish and Wildlife Office.

Authority

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

Dated: November 13, 2006.

Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–19572 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 223

Monday, November 20, 2006

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

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Homochitto National Forest, USDA Forest Service.

ACTION: Notice of new recreation fee site.

SUMMARY: Okhissa Lake is a recreational complex currently under development on the Homochitto National Forest, located near Bude, Mississippi. The lake will open for use by the public for boating and fishing between July and November 2007. The exact opening date will depend on completing work on infrastructure needed to support fishing (restrooms, boat launch, parking lots, etc.). Other recreational day-use activities (swimming, picnicking) will be available later as amenities to accommodate them are added. The Forest Service proposes to charge $5 per vehicle for access to all day-use activities (boat launching, swimming, and picnicking). Fees will not be charged until infrastructure needed to support an activity is available for use by the public. A $50 annual pass will also be available for purchase by the public. The annual pass would allow 12-month access to all day-use activities (boat launching, swimming, and picnicking). Opportunities for developed and primitive camping will be available in the future as work needed to accommodate these activities is complete. When available, the Forest Service will charge $13 for developed camping and $7 for primitive camping. Funds received from these fees will be used for continued operation and maintenance of the recreational complex and allow additional amenities to be added in the future. Funds will also be used to enhance or restore fisheries habitat of the lake.

DATES: Recreational boating and fishing opportunities at Okhissa Lake will be available to the public between July and November 2007. Other recreational activities described above will be available as infrastructure to support them is added.

FOR FURTHER INFORMATION CONTACT: Jeff Gainey, Recreation Program Manager, 601–965–1617, National Forests in Mississippi, 100 West Capitol Street, Suite 1141, Jackson, MS 39269.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, P.L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. The Homochitto National Forest currently manages only one other developed recreation site that provides camping, fishing and other day-use activities. Comparable recreational use fees are currently charged at this site. Development of Okhissa Lake and associated facilities are aimed at creating new recreational opportunities in an area that is economically depressed.

Dated: November 7, 2006.

Antoine L. Dixon,

Forest Supervisor, National Forest in Mississippi.

[FR Doc. 06–9260 Filed 11–17–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Rural Business Enterprise Grant Program Applications for Feasibility Studies or Feasibility and Marketing Studies

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of grants up to $50,000 per application from the Rural Business Enterprise Grant (RBEG) Program for fiscal year (FY) 2007 for feasibility studies or feasibility and marketing studies, to be competitively awarded. The amount available for these competitive grants is $250,000. Funding under this announcement is targeted to the Rural Economic Area Partnerships (REAP) Zones. A list of current REAP Zones is available at *http://www.ezec.gov/communit/reap.html.* This notice is being issued prior to passage of a final appropriations bill to allow applicants sufficient time to leverage financing, submit applications, and give the Agency time to process applications.

DATES: The deadline for receipt of applications in the Rural Development State Office is December 8, 2006. Applications received at a Rural Development State Office after that date will not be considered for FY 2007 funding.

ADDRESSES: For further information, entities located in REAP Zones wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the application package. REAP Zones are located in the states of New York, North Dakota, and Vermont. Contact information for the Rural Development State Offices in those states is as follows:

New York, USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

North Dakota, USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Vermont/New Hampshire, USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (RBS).

Funding Opportunity Title: Rural Business Enterprise Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance Number: 10.769.

Dates: Application Deadline: Completed applications must be received in the Rural Development State Office no later than December 8, 2006, to be eligible for FY 2007 grant funding.

Applications received after this date will not be eligible for FY 2007 grant funding.

I. Funding Opportunity Description

The RBEG program is authorized by section 310B(c) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)). Regulations are contained in 7 CFR part 1942, subpart G. The primary objective of the program is to improve the economic conditions of rural areas. The program is administered on behalf of RBS at the State level by the Rural Development State Offices. Assistance provided to rural areas under this program may include feasibility studies or feasibility and marketing studies for business development and economic development planning. The maximum grant available under this NOFA is $50,000. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G. Information required to be in the application package include an SF–424, ''Application for Federal Assistance,'' RD 1940–20, ''Request for Environmental Information,'' Scope of Work Narrative, Income Statement, Balance Sheet or Audit for previous three years, AD–1047, ''Debarment/Suspension Certification,'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion,'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements,'' Restrictions on Lobbying, RD 400–1, ''Equal Opportunity Agreement,'' RD 400–4, ''Assurance Agreement,'' Letter stating Board authorization to obtain assistance, Letter certifying citizenship, as referenced in 7 CFR 1942.307(b), and Evidence of Insurance and Bonding equal to the amount of Federal funds with the Agency listed as the loss payee. Applications will be tentatively scored by the State Offices and submitted to the National Office for review. To ensure that only high quality projects are funded, States may submit only those projects to the National Office that score one-hundred (100) or more of the points available at the State level. After submission to the National Office, applications will be ranked based on merit. The Agency Administrator may then assign up to 50 discretionary points to ensure geographic distribution of funds. After the assignment of discretionary points, final selections will be made.

Definitions

The definitions are published at 7 CFR 1942.304.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2007.

Total Funding: $250,000.

Approximate Number of Awards: 5.

Average Award: $50,000.

Anticipated Award Date: February 15, 2007.

III. Eligibility Information

A. Eligible Applicants

Grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include States, counties, cities, townships, and incorporated town and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas.

B. Cost Sharing or Matching

Matching funds are not required.

C. Other Eligibility Requirements

Applications will only be accepted from Rural Economic Area Partnerships (REAP) Zones for feasibility studies or feasibility and marketing studies.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or missing required elements.

IV. Fiscal Year 2007 Application and Submission Information

A. Address To Request Application Package

For further information, entities wishing to apply for assistance should contact the Rural Development State Office identified in this NOFA to obtain copies of the application package.

B. Content and Form of Submission

An application must contain all of the required elements. Each application received in a Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c) of the CONACT. Each selection priority criterion outlined in 7 CFR 1942.305 (b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice.

C. Submission Dates and Times

Application Deadline Date: December 8, 2006.

Explanation of Deadlines: Applications must be in the Rural Development State Office by the deadline date. All eligible applications, along with tentative scoring sheets and the Rural Development State Director's recommendation, will be referred to the National Office no later than December 29, 2006, for final scoring and selection for an award.

V. Application Review Information

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of a formal application and related materials in the manner established by RBS in accordance with 7 CFR part 1942, subpart G.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail.

B. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in the 7 CFR part 1942, subpart G and 7 CFR chapter XXX.

VII. Agency Contacts

For general questions about this announcement, please contact your USDA Rural Development State Office identified in this NOFA.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact

USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: November 14, 2006.

Jackie J. Gleason,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E6–19499 Filed 11–17–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Rural Business Enterprise Grant Program Preapplications for Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of two individual grants: One single $495,000 grant from the passenger transportation funds appropriated for the Rural Business Enterprise Grant (RBEG) program and another single $250,000 grant for Federally Recognized Native American Tribes' (FRNAT) from funds appropriated for the RBEG program. RBS will administer these awards under the RBEG program and 7 U.S.C. 1932(c)(2) for fiscal year (FY) 2007. Historically, Congress has allotted earmark funding for these specific programs. This notice is being issued prior to passage of a final appropriations bill, which may or may not provide an appropriation for these programs, to allow applicants sufficient time to leverage financing, submit applications, and give the Agency time to process applications within the current fiscal year. Each grant is to be competitively awarded to a qualified national organization. These grants are to provide technical assistance for rural transportation and rural transportation to FRNAT's. This notice will be amended should funding in excess of projected levels be received.

DATES: The deadline for receipt of preapplications in the Rural Development State Office is January 31, 2007. Applications received at a Rural Development State Office after that date will not be considered for FY 2007 funding.

FOR FURTHER INFORMATION CONTACT: Cindy Mason, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6866, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 690–1433, FAX: (202) 720–2213.

ADDRESSES: For additional information, entities wishing to apply for assistance should contact a Rural Development State Office to obtain copies of the application package. A list of Rural Development State Offices follows:

District of Columbia

Rural Development Business Programs, USDA, Specialty Lenders Division, 1400 Independence Avenue, SW., STOP 3225, Room 6867, Washington, DC 20250–3225, (202) 720–1400

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644

Illinois

USDA Rural Development State Office, 2118 W. Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858

Kansas

USDA Rural Development State Office, 1303 S.W., First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center,

Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480

Montana

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 85, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222/TDD (775) 885–0633

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE, Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007

Oregon

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007,Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4320/TDD (801) 524–3309

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733

SUPPLEMENTARY INFORMATION: Grants offered under this Notice are authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)(2)). The RBEG program is administered on behalf of RBS at the State level by the Rural Development State Offices. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. That subpart also contains the information required to be in the application package. For the FRNAT grant, which must benefit Federally Recognized Native American Tribes, at least 75 percent of the benefits of the project must be received by members of Federally Recognized Native American Tribes. The project that scores the greatest number of points based on the RBEG selection criteria and Administrator's points will be selected for each grant. Applications will be tentatively scored by the State Offices and submitted to the National Office for review, final scoring, and selection.

Applicants must be qualified national nonprofit organizations with experience in providing technical assistance and training to rural communities for the purpose of improving passenger transportation service or facilities. To be considered ''national'' RBS requires a qualified organization to provide evidence that it operates in multi-State areas. There is not a requirement to use the grant funds in a multi-State area. Under this notice, grants will be made to qualified, private, nonprofit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

Fiscal Year 2007 Preapplications Submission

Each application received in a Rural Development State Office will be reviewed to determine if this application is consistent with the eligible purposes contained in section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR 1942.305(b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G,

will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice. All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the Rural Development State Office. Multiple project applications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project.

For multiple-project applications, the average of the individual project scores will be the score for that application.

All eligible applications, along with tentative scoring sheets and the Rural Development State Director's recommendation, will be referred to the National Office no later than March 16, 2007, for final scoring and selection for an award.

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of a formal application and related materials in the manner and timeframe established by RBS in accordance with 7 CFR part 1942, subpart G.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC. 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: November 14, 2006.

Jackie J. Gleason,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E6–19500 Filed 11–17–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Faith-Based and Community Initiatives-Equal Treatment Rule; Notice of Request for Collection of Public Information With the Use of a Survey

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Development's intention to request clearance for a new information collection to measure Rural Development implementation of and compliance with the Equal Treatment Rule (7 CFR part 16) and Executive Order (EO) 13279 Equal Protection of the Laws for Faith-Based and Community Organizations.

DATES: Comments on this notice must be received by January 19, 2007 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Rhonda Brown, Faith-Based and Community Initiatives Coordinator, Operations and Management, Rural Development, 1400 Independence Avenue, SW., Washington, DC 20250, phone: (202) 692–0298, e-mail: *rhonda.brown@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Rural Development-Voluntary Survey on the Equal Treatment Rule.

Type of Request: New Information Collection.

Abstract: The Faith-Based and Community Initiatives (FBCI) was implemented in the Department of Agriculture by Executive Order (EO) 13280–Responstibilities of the Department of Agriculture and the Agency for International Development with Respect to Faith-Based and Community Initiatives, December 12, 2002. FBCI Reporting and Outreach began in Rural Development in 2004. Now that the programs are in the third year of this Presidential Initiative and to meet the long term goal of improved participant outcomes, it is time to measure customer experience with Rural Development's implementation of the Equal Treatment Rule and establish compliance benchmarks. The 14 Rural Development programs under the FBCI provide insured or guaranteed loans and/or grants to eligible applicants (including non-profit entities) located in rural geographic areas to assist them in providing services to beneficiaries, low-income individuals, and communities. Loan and grant applications and awards are processed through approximately 900 Field Offices. In accordance with Government

Performance and Results Act (GPRA) and EO 13280, the results of the survey will enable Rural Development to measure the results and overall effectiveness of FBCI outreach and implementation of and compliance with the Equal Treatment Rule and EO Orders 13279 and 13280, as well as implement compliance action plans and measure improvements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Program non-profit applicants.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 4,000.

Estimated Total Annual Burden on Respondents: 320 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Written comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. Comments may also be submitted electronically through Regulations.gov. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 9, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E6–19501 Filed 11–17–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1487

Expansion of Foreign–Trade Zone 163, Ponce, Puerto Rico, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, Codezol, C.D., grantee of FTZ 163, submitted an application to the Board for authority to expand FTZ 163 to include a site (Site 8 - 6 acres, Lugo warehouse) in Hormigueros, Puerto Rico, adjacent to the Ponce Customs port of entry (FTZ Docket 10–2006; filed 4/3/06);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 18276, 4/11/06), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 163 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to a sunset provision that would terminate further authority for the proposed site on November 1, 2011, unless the site is activated during that time period pursuant to 19 CFR Part 146 of the U.S. Customs and Border Protection regulations.

Signed at Washington, DC, this 9th day of November 2006.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Pierre V. Duy,

Acting Executive Secretary

[FR Doc. E6–19599 Filed 11–17–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–583–816)

Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 13, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the order on certain stainless steel butt–weld pipe fittings from Taiwan. *See Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Rescind in Part*, 71 FR 39663 (July 13, 2006) (''*Preliminary Results*''). The merchandise covered by this order is certain stainless steel butt–weld pipe fittings from Taiwan as described in the ''Scope of the Order'' section of this notice. The period of review (''POR'') is June 1, 2004, through May 31, 2005. We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we made one change to the margin calculation. The final weight–averaged dumping margin is listed below in the section titled ''Final Results of Review.''

EFFECTIVE DATE: November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Judy Lao, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0405 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department's preliminary results of review were published on July 13, 2006. *See Preliminary Results*. We invited parties to comment on the *Preliminary Results*. We received written comments on August 14, 2006, from Flowline Division of Markovitz Enterprise, Inc., Shaw Allow Piping Products, Inc., Gerlin, Inc., and Taylor Forge Stainless, Inc., (collectively, ''petitioners''), and from Ta Chen Stainless Steel Pipe, Ltd. (''Ta Chen''). On August 21, 2006, we received rebuttal comments from petitioners and Ta Chen. The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

The products subject to this order are certain stainless steel butt–weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt–weld pipe fittings (''pipe fittings'') are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system. Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Partial Rescission of Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind the review with respect to Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng''), Tru–Flow Industrial Co., Ltd. (''Tru–Flow''), Censor International Corporation (''Censor'') and PFP Taiwan Co., Ltd. (''PFP''), because we found that they had no entries of subject merchandise during the POR. *See Preliminary Results* at 39663. As the Department received no comments on this notice of intent to rescind we continue to find that rescission of the review concerning Liang Feng, Tru–Flow, Censor, and PFP is appropriate. Therefore, the Department is rescinding the review with respect to Liang Feng, Tru–Flow, Censor, and PFP.

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Administrative Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan; Final Results of Antidumping Duty Administrative Review (''Decision Memorandum''), dated November 13, 2006, which is hereby adopted by this notice. A list of the issues raised and to which we have responded, all of which are in the Decision Memorandum, is appended to this notice. The Decision Memorandum is on file in the Central Records Unit in room B–099 of the main Commerce building, and can also be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the public version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made a minor correction to include deductions reported in the field BILLADJU (U.S. billing adjustments) in the discount and rebates adjustment to U.S. price. This did not change the margin. *See* the Decision Memorandum at Comment 5 and Sales Analysis Memorandum for the Final Results of Administrative Review of Certain Stainless Steel Pipe Butt–weld Pipe Fittings from Taiwan: Ta Chen Stainless Steel Pipe Co., Ltd. and Ta Chen International (CA) Corp., (November 13, 2006).

Final Results of Review

As a result of our review, we determine that the following weighted–average margin exists for the period June 1, 2004, through May 31, 2005:

Company	Weighted-Average Margin (percent)
Ta Chen Stainless Pipe Co., Ltd	0.79

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise produced by Ta Chen. Antidumping duties for the rescinded companies, Liang Feng, Tru–Flow, Censor, and PFP, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (i.e., companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of stainless steel butt–weld pipe fittings from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for the companies covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in the less–than-fair–value investigation, the cash deposit rate will continue to be the company–specific rate from the most recent review; (3) if the exporter is not a firm covered in this review, a prior review, or less–than-fair–value the investigation, but the producer is, the cash deposit rate will be that established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will be 51.01 percent, the ''All Others'' rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 13, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix – Issues in Decision Memorandum

Issues

1. Reliability of Ta Chen's Financial Statements

2. CEP Offset
3. CEP Profit Calculation
4. Calculation of Margin on Weight Basis

5. Alleged Calculation Errors

[FR Doc. E6–19611 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order/Pursuant to Court Decision: Wooden Bedroom Furniture From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On October 31, 2006, the United States Court of International Trade (''Court'') entered a stipulated judgment in the consolidated case of *Dorbest Limited, et. al.* v. *United States*, Consol. Ct. No. 05–cv–00003 (''*Court Order*''). This litigation arises out of the Department's *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) (''*Final Determination*''), as amended, 70 FR 329 (January 4, 2005) (''*Amended Final Determination and Order*''). The court case filed by Lacquer Craft Manufacturing Company Ltd. (''Lacquer Craft'') (*Lacquer Craft Manufacturing Company Ltd.* v. *United States*, Court No. 05–00083), was consolidated into the case filed by Dorbest Limited, et. al. (Court No. 05–00003). Pursuant to the Court's Order, Lacquer Craft's court case (Court No. 05–00083) has been severed from the consolidated litigation (Court No. 05–00003), and Lacquer Craft's claims against the government dismissed. Because the litigation in Lacquer Craft's case is now concluded, the Department is issuing an amended final determination in accordance with the Stipulated Judgement in this action.

DATES: *Effective Date:* November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0414.

SUPPLEMENTARY INFORMATION:

On November 17, 2004, the Department published its notice of final determination in the investigation of wooden bedroom furniture from the PRC. *See Final Determination*. On January 4, 2005, the Department published its notice of amended final determination and antidumping duty order in the investigation on wooden bedroom furniture from the PRC. *See Amended Final Determination and Order.*

On March 4, 2005, Lacquer Craft filed its complaint with the Court with respect to the Department's *Amended Final Determination and Order* in *Lacquer Craft Manufacturing Company, Ltd.* v. *United States*, Ct. No. 05–00083. Lacquer Craft's court case was subsequently consolidated with court number 05–00003 on June 29, 2005. Pursuant to the Court's Order, Lacquer Craft's court case (Court No. 05–00083) was severed from the consolidated litigation (Court No. 05–00003), and Lacquer Craft's court case against the government was dismissed.

The Court Order further orders the Department of Commerce (''the Department'') to (i) exclude wooden bedroom furniture from the Amended Final Determination and Order when it is both produced and exported by Lacquer Craft,[1] and (ii) amend the weighted-average dumping margin applied to respondents with separate-rate status [2] to exclude Lacquer Craft from the calculation for subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the Amended Final Determination resulting from the Court's stipulated judgment.

Amended Final Determination

Because all claims filed by Lacquer Craft against the Department have been dismissed, and because the litigation in Lacquer Craft's de-consolidated court case is concluded, we are now amending the *Amended Final Determination and Order* to reflect the results of the Court's Order. Lacquer Craft is excluded from the Order. The amended weighted-average rate applied to respondents with separate-rate status is 7.24 percent. The rate applied to the PRC-wide entity remains unchanged.

With the above revisions, the dumping margins for this Order are as follows:

Company	Weighted-average margin (percent)
Dongguan Lung Dong Furniture Co., Ltd., or Dongguan Dong He Furniture Co., Ltd.	2.32
Rui Feng Woodwork Co., Ltd., or Rui Feng Lumber Development Co., Ltd. or Dorbest Limited	7.87
Lacquer Craft Mfg. Co., Ltd.	Excluded
Markor International Furniture (Tianjin) Manufacturing Company, Ltd.	0.83
Shing Mark Enterprise Co., Ltd., or Carven Industries Limited (BVI), or Carven I Industries Limited (HK), or Dongguan Zhenxin Furniture Co., Ltd., or Dongguan Yongpeng Furniture Co., Ltd.	4.96
Starcorp Furniture (Shanghai) Co., Ltd., or Orin Furniture (Shanghai) Co., Ltd., or Shanghai Starcorp Furniture Co., Ltd.	15.78
Alexandre International Corp., or Southern Art Development Ltd., or Alexandre Furniture (Shenzhen) Co., Ltd., or Southern Art Furniture Factory	7.24
Art Heritage International, Ltd., or Super Art Furniture Co., Ltd., or Artwork Metal & Plastic Co., Ltd., or Jibson Industries Ltd., or Always Loyal International	7.24
Billy Wood Industrial (Dong Guan) Co., Ltd., or Great Union Industrial (Dongguan) Co., Ltd., or Time Faith Ltd.	7.24
Changshu HTC Import & Export Co., Ltd.	7.24
Cheng Meng Furniture (PTE) Ltd., or China Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.	7.24
Chuan Fa Furniture Factory	7.24
Classic Furniture Global Co., Ltd.	7.24
Clearwise Co., Ltd.	7.24
COE Ltd.	7.24
Dalian Guangming Furniture Co., Ltd.	7.24
Dalian Huafeng Furniture Co., Ltd	7.24
Decca Furniture Limited	7.24
Dongguan Cambridge Furniture Co., or Glory Oceanic Co., Ltd.	7.24
Dongguan Chunsan Wood Products Co., Ltd., or Trendex Industries Ltd.	7.24
Dongguan Creation Furniture Co., Ltd., or Creation Industries Co., Ltd.	7.24

[1] For purposes of this order, wooden bedroom furniture produced and exported by Lacquer Craft includes furniture produced and exported by any of Lacquer Craft Manufacturing Company Ltd.'s factories in the People's Republic of China, which currently are in Dong Guan (Lacquer Craft Manufacturing Company Ltd. (Dong Guan) and Zhejiang (Lacquer Craft Manufacturing Company Ltd. (Zhejiang)).

[2] For purposes of this order, ''respondents with separate-rate status'' shall mean the non-mandatory respondents granted a separate rate by the Department in the underlying investigation of wooden bedroom furniture. Commerce's dumping margin applied to such respondents is calculated as the weighted-average of the rates of the mandatory respondents.

Company	Weighted-average margin (percent)
Dongguan Grand Style Furniture, or Hong Kong Da Zhi Furniture Co., Ltd.	7.24
Dongguan Great Reputation Furniture Co., Ltd.	7.24
Dongguan Hero Way Woodwork Co., Ltd., or Dongguan Da Zhong Woodwork Co., Ltd., or Hero Way Enterprises Ltd., or Well Earth International Ltd.	7.24
Dongguan Hung Sheng Artware Products Co., Ltd., or Coronal Enterprise Co., Ltd.	7.24
Dongguan Kin Feng Furniture Co., Ltd.	7.24
Dongguan Kingstone Furniture Co., Ltd., or Kingstone Furniture Co., Ltd.	7.24
Dongguan Liaobushangdun Huada Furniture Factory, or Great Rich (HK) Enterprise Co. Ltd.	7.24
Dongguan Qingxi Xinyi Craft Furniture Factory (Joyce Art Factory)	7.24
Dongguan Singways Furniture Co., Ltd.	7.24
Dongguan Sunrise Furniture Co., or Taicang Sunrise Wood Industry Co., Ltd., or Shanghai Sunrise Furniture Co., Ltd., or Fairmont Designs	7.24
Dongying Huanghekou Furniture Industry Co., Ltd.	7.24
Dream Rooms Furniture (Shanghai) Co., Ltd.	7.24
Eurosa (Kunshan) Co., Ltd., or Eurosa Furniture Co., (PTE) Ltd.	7.24
Ever Spring Furniture Co. Ltd., or S.Y.C. Family Enterprise Co., Ltd.	7.24
Fine Furniture (Shanghai) Ltd.	7.24
Foshan Guanqiu Furniture Co., Ltd.	7.24
Fujian Lianfu Forestry Co., Ltd., or Fujian Wonder Pacific Inc.	7.24
Gaomi Yatai Wooden Ware Co., Ltd., or Team Prospect International Ltd., or Money Gain International Co.	7.24
Garri Furniture (Dong Guan) Co., Ltd., or Molabile International, Inc., or Weei Geo Enterprise Co., Ltd.	7.24
Green River Wood (Dongguan) Ltd.	7.24
Guangming Group Wumahe Furniture Co., Ltd.	7.24
Guangzhou Maria Yee Furnishings Ltd., Pyla HK, Ltd., and Maria Yee, Inc.	7.24
Hainan Jong Bao Lumber Co., Ltd., or Jibbon Enterprise Co., Ltd.	7.24
Hamilton & Spill Ltd.	7.24
Hang Hai Woodcraft's Art Factory	7.24
Hualing Furniture (China) Co., Ltd., or Tony House Manufacture (China) Co., Ltd., or Buysell Investments Ltd., or Tony House Industries Co., Ltd.	7.24
Jardine Enterprise, Ltd.	7.24
Jiangmen Kinwai Furniture Decoration Co., Ltd.	7.24
Jiangmen Kinwai International Furniture Co., Ltd.	7.24
Jiangsu Weifu Group Fullhouse Furniture Manufacturing. Corp.	7.24
Jiangsu Yuexing Furniture Group Co., Ltd.	7.24
Jiedong Lehouse Furniture Co., Ltd.	7.24
King's Way Furniture Industries Co., Ltd., or Kingsyear Ltd.	7.24
Kuan Lin Furniture (Dong Guan) Co., Ltd., or Kuan Lin Furniture Factory, or Kuan Lin Furniture Co., Ltd.	7.24
Kunshan Lee Wood Product Co., Ltd.	7.24
Kunshan Summit Furniture Co., Ltd.	7.24
Langfang Tiancheng Furniture Co., Ltd.	7.24
Leefu Wood (Dongguan) Co., Ltd., or King Rich International, Ltd.	7.24
Link Silver Ltd. (V.I.B.), or Forward Win Enterprises Co. Ltd., or Dongguan Haoshun Furniture Ltd.	7.24
Locke Furniture Factory, or Kai Chan Furniture Co., Ltd., or Kai Chan (Hong Kong) Enterprise Ltd., or Taiwan Kai Chan Co., Ltd.	7.24
Longrange Furniture Co., Ltd.	7.24
Nanhai Baiyi Woodwork Co., Ltd.	7.24
Nanhai Jiantai Woodwork Co., Ltd., or Fortune Glory Industrial Ltd. (H.K. Ltd)	7.24
Nantong Dongfang Orient Furniture Co., Ltd.	7.24
Nantong Yushi Furniture Co., Ltd.	7.24
Nathan International Ltd., or Nathan Rattan Factory	7.24
Orient International Holding Shanghai Foreign Trade Co., Ltd.	7.24
Passwell Corporation, or Pleasant Wave Ltd.	7.24
Perfect Line Furniture Co., Ltd.	7.24
Prime Wood International Co., Ltd., or Prime Best International Co., Ltd., or Prime Best Factory, or Liang Huang (Jiaxing) Enterprise Co., Ltd.	7.24
PuTian JingGong Furniture Co., Ltd.	7.24
Qingdao Liangmu Co., Ltd.	7.24
Restonic (Dongguan) Furniture Ltd., or Restonic Far East (Samoa) Ltd.	7.24
RiZhao SanMu Woodworking Co., Ltd.	7.24
Season Furniture Manufacturing Co., or Season Industrial Development Co.	7.24
Sen Yeong International Co., Ltd., or Sheh Hau International Trading Ltd.	7.24
Shanghai Jian Pu Export & Import Co., Ltd.	7.24
Shanghai Maoji Imp and Exp Co., Ltd.	7.24
Sheng Jing Wood Products (Beijing) Co., Ltd., or Telstar Enterprises Ltd.	7.24
Shenyang Shining Dongxing Furniture Co., Ltd.	7.24
Shenzhen Forest Furniture Co., Ltd.	7.24
Shenzhen Jiafa High Grade Furniture Co., Ltd., or Golden Lion International Trading Ltd.	7.24
Shenzhen New Fudu Furniture Co., Ltd.	7.24
Shenzhen Wonderful Furniture Co., Ltd.	7.24
Shenzhen Xiande Furniture Factory	7.24
Shenzhen Xingli Furniture Co., Ltd.	7.24
Shun Feng Furniture Co., Ltd.	7.24

Company	Weighted-average margin (percent)
Songgang Jasonwood Furniture Factory, or Jasonwood Industrial Co., Ltd. S.A.	7.24
Starwood Furniture Manufacturing Co. Ltd.	7.24
Starwood Industries Ltd.	7.24
Strongson Furniture (Shenzhen) Co., Ltd., or Strongson Furniture Co., Ltd., or Strongson (HK) Co.	7.24
Sunforce Furniture (Hui-Yang) Co., Ltd., or Sun Fung Wooden Factory, or Sun Fung Co., or Shin Feng Furniture Co., Ltd., or Stupendous International Co., Ltd.	7.24
Superwood Co., Ltd., or Lianjiang Zongyu Art Products Co., Ltd.	7.24
Tarzan Furniture Industries Ltd., or Samso Industries Ltd.	7.24
Teamway Furniture (Dong Guan) Ltd., or Brittomart Inc.	7.24
Techniwood Industries Ltd., or Ningbo Furniture Industries Limited, or Ningbo Hengrun Furniture Co., Ltd.	7.24
Tianjin Fortune Furniture Co., Ltd.	7.24
Tianjin Master Home Furniture	7.24
Tianjin Phu Shing Woodwork Enterprise Co., Ltd.	7.24
Tianjin Sande Fairwood Furniture Co., Ltd.	7.24
Tube-Smith Enterprise (ZhangZhou) Co., Ltd., or Tube-Smith Enterprise (Haimen) Co., Ltd., or Billonworth Enterprises Ltd.	7.24
Union Friend International Trade Co., Ltd.	7.24
U-Rich Furniture (Zhangzhou) Co., Ltd., or U-Rich Furniture Ltd.	7.24
Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd., or Dongguan Wanengtong Industry Co., Ltd.	7.24
Woodworth Wooden Industries (Dong Guan) Co., Ltd.	7.24
Xiamen Yongquan Sci-Tech Development Co., Ltd.	7.24
Jiangsu XiangSheng Bedtime Furniture Co., Ltd.	7.24
Xingli Arts & Crafts Factory of Yangchun	7.24
Yangchun Hengli Co. Ltd.	7.24
Yeh Brothers World Trade, Inc.	7.24
Yichun Guangming Furniture Co., Ltd.	7.24
Yida Co., Ltd., or Yitai Worldwide, Ltd., or Yili Co., Ltd., or Yetbuild Co., Ltd.	7.24
Yihua Timber Industry Co., Ltd.	7.24
Zhang Zhou Sanlong Wood Product Co., Ltd.	7.24
Zhangjiagang Zheng Yan Decoration Co., Ltd.	7.24
Zhangjiagang Daye Hotel Furniture Co., Ltd.	7.24
Zhangzhou Guohui Industrial & Trade Co. Ltd.	7.24
Zhanjiang Sunwin Arts & Crafts Co., Ltd.	7.24
Zhong Shan Fullwin Furniture Co., Ltd.	7.24
Zhongshan Fookyik Furniture Co., Ltd.	7.24
Zhongshan Golden King Furniture Industrial Co., Ltd.	7.24
Zhoushan For-Strong Wood Co., Ltd.	7.24
PRC-Wide Rate*	198.08

* In the *Final Determination*, the Department inadvertently listed Tech Lane Wood Mfg. and Kee Jia Wood Mfg. separately in the weighted-average dumping margin chart, which may have led parties to conclude that these companies were entitled to a separate rate. This, in fact, is not the case. Subject merchandise produced/exported by Tech Lane Wood Mfg. and Kee Jia Wood Mfg. is subject to the PRC-wide rate.

Within five business days of publication of this notice, the Department will issue instructions to U.S. Customs and Border Protection (''CBP'') to revise the cash deposit rates for the companies listed above that have a separate rate, effective as of the publication of this notice. Further, we will instruct CBP to liquidate all entries of subject merchandise produced and exported by Lacquer Craft, without regard to antidumping duties, because Lacquer Craft is excluded from the antidumping duty order.

This notice is published in accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended.

Dated: November 14, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–19585 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–475–827)

Correction to Notice of Amended Final Determination Pursuant to Final Court Decision and Partial Revocation of Order on Certain Cut–To-Length Plate from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 29, 2005, the Department of Commerce published in the **Federal Register** its *Notice of Amended Final Determination Pursuant to Final Court Decision and Partial Revocation of Order on Certain Cut–To-Length Plate from Italy*, 70 FR 51013 (*Amended Final Determination*). Due to an error in the *Amended Final Determination* pertaining to the effective date of the amended final determination, the Department is issuing a correction.

EFFECTIVE DATE: November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6071.

SUPPLEMENTARY INFORMATION:

Correction

In the Amended Final Determination, we incorrectly stated that we would instruct U.S. Customs and Border Protection (CBP) to:

> . . . collect cash deposits of estimated countervailing duties in the percentage of 2.45 percent ad valorem of the f.o.b. invoice price on all shipments of subject merchandise from ILVA/ILT entered or withdrawn from

warehouse, for consumption, on or after April 16, 2004.

See 70 FR at 51014.

We correct and amend our *Amended Final Determination* with the following language:

We will instruct CBP to collect cash deposits of estimated countervailing duties in the percentage of 2.45 percent *ad valorem* of the f.o.b. invoice price on all shipments of subject merchandise from ILVA/ILT entered or withdrawn from warehouse, for consumption, on or after the publication date of this notice in the **Federal Register**.

This notice is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: November 9, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–19597 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111406F]

Fisheries of the Exclusive Economic Zone Off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of an application for an exempted fishing permit.

SUMMARY: This notice announces receipt of an application for an exempted fishing permit (EFP) from the American Fisheries Act (AFA) Catcher Vessel Intercooperative, and the Pollock Conservation Cooperative. If granted, the EFP would allow the applicants to use a salmon bycatch reduction intra-cooperative agreement (ICA) in the 2007 Bering Sea pollock fishery, and be exempt from closures of the salmon savings areas. This project is intended to promote the objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Copies of the EFP application and the environmental assessment (EA) are available by writing to the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh. The application and EA are also available from the Alaska Region, NMFS website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at §§ 679.6 and 600.745(b) authorize issuance of EFPs to allow fishing that would be otherwise prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

NMFS received an EFP application from the AFA Catcher Vessel Intercooperative and the Pollock Conservation Cooperative (hereafter referred to as ''applicants'') on October 19, 2006. The primary objective of the proposed EFP is to test the feasibility of an ICA designed to avoid salmon bycatch in the Bering Sea pollock fishery. The applicants developed the feasibility study in cooperation with NMFS scientists at the Alaska Fisheries Science Center (AFSC). The project will provide information needed by the Council and NMFS to inform decision making on subsequent salmon bycatch reduction management actions. Specifically, the project will assess the feasibility of using an ICA to share salmon bycatch information among pollock fishery participants, determine areas of high salmon bycatch, and monitor vessels= ability to meet the operational guidelines of the ICA to avoid these areas in a manner that is not allowed under current regulations.

Background

Pacific salmon are caught incidentally in the BSAI trawl fisheries. Of the five species of Pacific salmon, Chinook salmon (*Onchorynchus tshawytscha*) and chum salmon (*O. keta*) are most often incidentally caught in the pollock fishery. Pacific salmon are placed into two categories for purposes of salmon bycatch management: Chinook and non-Chinook. The non-Chinook category is comprised of chum, sockeye (*O. nerka*), pink (*O. gorbuscha*), and coho (*O. kisutch*) salmon. However, from 2001 through 2006, chum salmon represented about 99 percent of non-Chinook salmon harvested incidentally in the pollock trawl fisheries. For purposes of this notice, all non-Chinook salmon are referred to as chum salmon.

To address Chinook salmon bycatch concerns, the Council adopted several management measures designed to reduce overall Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted and NMFS approved Amendment 21b to the FMP. Based on historic information on salmon bycatch, Amendment 21b established a Chinook salmon savings area (60 FR 31215, November 29, 1995). Under Amendment 21b, the Chinook salmon savings area closed to trawl gear when the incidental catch of Chinook salmon in BSAI trawl fisheries reached 48,000 fish. Amendment 58 to the FMP revised the Chinook salmon savings area measures (65 FR 60587, October 12, 2000). Amendment 58 reduced the Chinook salmon bycatch limit from 48,000 fish to 29,000 fish, mandated year-round accounting of Chinook bycatch in the directed pollock fishery, revised the boundaries of the Chinook salmon savings area closure, and implemented new closure dates. The timing of the closure depends on when the limit is reached as follows:

(1) Before April 15, the area closes immediately through April 15. After April 15, the area re-opens, but closes again from September 1 through December 31.

(2) Between April 15 and September 1, the area would close from September 1 through the end of the year.

(3) After September 1, the area closes immediately through the end of the year.

The Chinook salmon savings area was further modified under Amendment 82 to the FMP (70 FR 9856, March 1, 2005). Amendment 82 established a separate Aleutian Islands subarea bycatch limit that when reached, would close the existing Chinook salmon savings area located in that subarea (Area 1). The Chinook salmon savings area in the Bering Sea subarea remained unchanged, but was designated as Area 2 of the Chinook salmon savings area (Figure 8 to 50 CFR part 679).

The Council also adopted a time-area closure designed to reduce overall chum salmon bycatch in the BSAI trawl fisheries. In 1995, Amendment 35 to the FMP established the chum salmon savings area (60 FR 34904, July 5, 1995). This area is closed to all trawling from August 1 through August 31 of each year. Additionally, if 42,000 non-Chinook salmon are caught in the Catcher Vessel Operational Area during the period August 15 through October 14, the area remains closed for the remainder of the calendar year.

Western Alaska Community Development Quota (CDQ) groups receive, along with allocations of

groundfish CDQ, individual allocations of Chinook and non-Chinook annual bycatch amounts. Vessels directed fishing for CDQ pollock are not subject to the chum and Chinook salmon savings area closures that apply to the non-CDQ pollock fisheries. Rather, vessels participating in directed CDQ pollock fisheries on behalf of individual CDQ groups are subject to group-specific closures only after they exceed a given CDQ group's chum or Chinook salmon bycatch limit. Thus, individual CDQ groups are subject to salmon savings area closures based on their respective catch of chum or Chinook salmon while directed fishing for CDQ pollock.

The Chinook and chum salmon savings areas were adopted based on historic observed salmon bycatch rates and were designed to avoid high spatial and temporal levels of salmon bycatch. From 1990 through 2001, BSAI salmon bycatch averaged 37,819 Chinook and 69,332 chum annually. Recently, however, salmon bycatch numbers have increased substantially. In 2003, 54,911 Chinook salmon and 197,091 chum salmon were taken incidentally in the trawl fisheries. In 2004, salmon bycatch further increased to 62,493 Chinook and 465,650 chum salmon. Bycatch amounts remained high in 2005 and totaled 67,541 Chinook and 116,999 chum salmon. High bycatch amounts continued in 2006 with 74,120 Chinook and 317,375 chum salmon taken incidentally by September 23, 2006. Since establishment of the chum salmon savings area in 1995, the bycatch of non-Chinook salmon triggered closures in 2002, 2003, 2004, 2005, and 2006.

In February 2005, the Council initiated an Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis to explore alternatives to the current salmon bycatch measures. Spatial and temporal comparisons of non-CDQ vessels fishing outside the salmon savings areas with CDQ vessels fishing inside the salmon savings areas indicated that bycatch rates were much higher outside the savings areas.

In October 2005, the Council recommended Amendment 84 to the FMP. Amendment 84 would exempt non-CDQ and CDQ pollock vessels participating in a salmon bycatch reduction ICA from closures of the Chinook and chum salmon savings areas in the Bering Sea and enable the pollock fleet to utilize its internal cooperative structure to communicate amongst themselves and reduce salmon bycatch. Because the chum salmon savings area closes by regulation on August 1 of every year (§ 679.22(a)(10)) and this closure was expected to exacerbate the high salmon bycatch the pollock fleet has experienced in recent years, the Council stressed the importance of implementing Amendment 84 by August 1, 2006. The Council also asked for an annual report from participants in the salmon bycatch reduction ICA on how effective the agreement appears to be at reducing salmon bycatch, although regulations would not require reporting to the Council. The intent of the Council is to assess the effectiveness of the ICA in coordinating voluntary salmon bycatch reduction efforts by participants in the Bering Sea pollock fisheries.

During the development of a draft proposed rule to implement Amendment 84, NOAA General Council, Alaska Region (GCAK) determined that specific ICA provisions must be incorporated into regulations for compliance with the Administrative Procedure Act (APA) and National Standard 9. These provisions include requirements for:

(1) The initial salmon bycatch base rate that vessels' salmon bycatch rates will be compared against;

(2) Inseason adjustments to the initial salmon bycatch base rate;

(3) Cooperative tier assignments and inseason adjustments to those assignments;

(4) Closure notices and area closure requirements based on tier assignment;

(5) Internal ICA enforcement provisions; and

(6) Inseason data sharing provisions among the pollock harvesting cooperatives and western Alaska subsistence salmon user groups. These provisions are described in detail in the EA prepared for this action (see **ADDRESSES**) and are generally described below.

Industry is concerned that incorporating components of the salmon bycatch reduction ICA into regulation would reduce their operational flexibility and ability to respond to inseason changes in salmon distribution, abundance, and bycatch levels. In June 2006, NMFS and GCAK met with members of the pollock fleet and western Alaska subsistance user groups to describe these issues and begin working towards resolving these concerns.

To address the immediate need of implementing a program to enable vessels to reduce their salmon bycatch during directed fishing for pollock, and to explore whether promulgating regulations that include components of the salmon bycatch reduction ICA would be unworkable for the fleet, the applicants were granted an EFP for the time period August 2, 2006, through November 1, 2006.

The 2006 EFP exempted CDQ and non-CDQ pollock vessels operating under a salmon bycatch reduction ICA from closures of the salmon savings areas. The EFP allowed the participants to conduct operations under the salmon bycatch reduction EFP during the ''B'' season. Under the conditions of the 2006 EFP, the applicants are scheduled to present initial and final results at the December 2006 and February 2007 Council meetings, respectively. Preliminary indications are that salmon bycatch was reduced under the EFP, although it is not known whether these reductions are due to decreases or movements in overall salmon biomass.

On October 16, 2006, NMFS received an EFP application that would continue to evaluate the goals described in the 2006 EFP. However, because chum salmon is the predominant bycatch problem during the ''B'' season, and Chinook salmon bycatch is the predominant bycatch problem during the ''A'' season, the applicants expect to be able to evaluate these goals relative to Chinook salmon bycatch in the early part of 2007. The EFP is also expected to provide a basis for potential future changes to the ICA to decrease salmon bycatch. Pending implementation of Amendment 84, this information could also provide the basis for rulemaking to adjust ICA provisions that would be established in regulations.

Description of Salmon Bycatch Reduction ICA and Associated EFP

The salmon bycatch reduction ICA is intended to reduce salmon bycatch in the Bering Sea pollock fisheries. The ICA would be incorporated into existing cooperative agreements among participants in the AFA fishery and include CDQ groups and western Alaska community organizations as well as AFA cooperatives. Parties to the ICA include the following AFA cooperatives: Pollock Conservation Cooperative, the High Seas Catchers Cooperative, the Mothership Fleet Cooperative, the Inshore Cooperatives (Akutan Catcher Vessel Association, Arctic Enterprise Association, Northern Victor Fleet Cooperative, Peter Pan Fleet Cooperative, Unalaska Fleet Cooperative, UniSea Fleet Cooperative, and Westward Fleet Cooperative) and all six CDQ groups. Additionally, two western Alaskan groups who have an interest in the sustainability of salmon resources would be parties in the ICA. All these groups have participated in meetings to develop the ICA and have a compliance responsibility in the agreement.

The purpose of the ICA is to use real-time salmon bycatch information to avoid unacceptably high incidental catch rates of chum and Chinook salmon. The ICA is a private, contractual agreement among the parties. All parties to the ICA have agreed to abide by all tenants of the contract and the structure of the ICA and to retain the services of a private contractor to gather and analyze data, monitor the fleet, and report necessary bycatch information to the parties of the ICA.

The ICA requires that the bycatch rate of a participating cooperative be compared to a pre-determined bycatch rate (base rate). All ICA provisions for fleet bycatch avoidance behavior, closures, and enforcement are based on the ratio of the cooperative's actual salmon bycatch rate to the base rate.

An ICA cooperative is assigned to one of three tiers based on its salmon bycatch rate relative to the base rate. Higher tiers correspond to higher salmon bycatch rates. Tier assignments determine access privileges to specific areas. A cooperative assigned to a high tier is restricted from fishing in a relatively larger geographic area to avoid unacceptably high salmon bycatch areas. A cooperative assigned to a low tier based on fishing behavior that results in relatively low salmon bycatch rates is granted access to a wider range of fishing areas. The private contractor tracks salmon bycatch rates for each cooperative. A participating cooperative is assigned to a tier each week based on its salmon bycatch rate for the previous week. Thus, vessels have incentives to avoid fishing behavior that results in high salmon bycatch rates.

Any of the parties to the ICA may bring suit against another party for breaching the contract. A vessel that enters an area closed to it based on its tier assignment may be assessed a monetary penalty. The ICA contains a penalty schedule for violating these closures.

The project would begin January 20, 2007, and continue until November 1, 2007. Fishing would occur in the Bering Sea subarea during the normal fishing seasons described in regulation at § 679.23. Fishing would occur within the annual specified prohibited species catch limits and total allowable catch for pollock. No additional fish would be allocated for fishing under this EFP. Exemptions to regulations granted under the EFP would apply to all directed Bering Sea pollock fisheries, including participants in the CDQ program who participate in the ICA.

The proposed EFP exempts vessels listed in the application from chum and Chinook salmon savings area closures. These exemptions are necessary to allow the permit holder to effectively test the feasibility the ICA to reduce salmon bycatch in the Bering Sea. As noted above, the analysis prepared for this action indicates that some geographic areas may present additional opportunities to reduce salmon bycatch, but are otherwise closed to fishing during certain times of the year. The EFP would exempt the applicant from fishing closures related to salmon bycatch implemented under §§ 679.21 and 679.22. Additionally, vessels listed on the application would be exempt from salmon bycatch related prohibitions against fishing described in § 679.7(c)(2). Vessels would still be subject to all other requirements described in 50 CFR part 679, including monitoring and observer coverage requirements described in §§ 679.28 and 679.50.

The applicant would be required to report to NMFS and the Council at the December 2007 amd February 2008 meetings the findings of this study. Findings will include how well the project met the goals and objectives described above, and the number of violations of the ICA, the nature of those violations, and the penalty imposed, if any, against the violating entity.

In accordance with § 600.745(b) and § 679.6, NMFS has determined that the proposal warrants consideration and has initiated consultation with the Council. The Council will consider the EFP application during its meeting in Anchorage, Alaska from December 4–12, 2006. The applicants have been invited to appear in support of the application. Interested persons may comment on the application at the Council meeting during public testimony. Information regarding the December 2006 Council meeting is available at the Council's website at *http://www.fakr.noaa.gov/npfmc/council.htm*.

Copies of the application and EA are available for review from NMFS (see **ADDRESSES**).

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

Dated: November 15, 2006.

James P. Burgess,

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

[FR Doc. E6–19530 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 051017270–5339–02; I.D. 093005B]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; 2007 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs

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

ACTION: Notice.

SUMMARY: NMFS is announcing that the quotas for the Atlantic surfclam and ocean quahog fisheries for 2007 remain status quo. Regulations governing these fisheries require NMFS to notify the public of the allowable harvest levels for Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone in the **Federal Register** if the previous year's quota specifications remain unchanged.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Management Specialist, 978–281–9273.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS issue notification in the Federal Register of the upcoming year's quota, even in cases where the quota remains unchanged from the previous year. At its June 2006 meeting, the Mid-Atlantic Fishery Management Council voted that no action be taken to change the quota specifications for Atlantic surfclams and ocean quahogs for the 2007 fishing year (January 1 through December 31, 2007), and recommended maintaining the 2005 and 2006 quota levels of 3.4 million bu (181 million L) for Atlantic surfclams, 5.333 million bu (284 million L) for ocean quahogs, and 100,000 Maine bu (3.524 million L) for Maine ocean quahogs, as announced in the **Federal Register** on December 28, 2005 (70 FR 76715).

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

Dated: November 15, 2006.

James P. Burgess,

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

[FR Doc. E6–19586 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110606D]

Marine Mammals; File Nos. 782–1719, 1071–1770

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

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that NMFS, National Marine Mammal Laboratory (NMML), 7600 Sand Point Way, NE, Seattle, WA 98102 has been issued an amendment to scientific research Permit No. 782–1719–03 and that The Dolphin Institute (Adam A. Pack, Ph.D., Principal Investigator), 420 Ward Avenue, Suite 212, Honolulu, HI 96814 has been issued an amendment to scientific research Permit No. 1071–1770–01.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s): (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 17, 2005 and March 1, 2005, notice was published in the **Federal Register** (70 FR 8076) and (70 FR 9928), respectively, that requests to take marine mammals for scientific research had been submitted by the above-named institutions. The requested amendments have been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 782–1719–04, issued to NMML (John Bengtson, Principal Investigator), allows takes of all species of cetaceans under NMFS jurisdiction during stock assessment activities throughout U.S. territorial waters and the high seas of the North Pacific Ocean, Southern Ocean, Arctic Ocean, and the territorial waters of Mexico (Gulf of California only), Canada, Russia, Japan, and the Philippines. This permit has been amended to increase the number of bowhead whales (Balaena mysticetus) approached during aerial surveys to 11,000, biopsy sampled to 100, and tagged to 25 in the North Pacific and Arctic Oceans. The amendment also permits the Holder to conduct limited biopsy sampling of several species of large whale calves less than six months of age (with the exception of neonates) and attending females. The amended permit expires June 30, 2009.

Permit No. 1071–1770–02 issued to Dr. Adam Pack of The Dolphin Institute allows takes of non-listed cetaceans and humpback whales (*Megaptera novaeangliae*) in the Eastern, Western, and Central North Pacific Ocean. The permit has been amended to allow research of blue whales (*Balaenoptera musculus*), sperm whales (*Physeter macrocephalus*), and fin whales (*Balaenoptera physalus*). The amended permit is valid until August 31, 2010.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of these amended permits, as required by the ESA, was based on a finding that such amendments: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2280; fax (808)973–2941.

Dated: November 14, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–19589 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 5.3; Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Open Meeting.

SUMMARY: The Climate Change Science Program (CCSP) Product Development Committee for Synthesis and Assessment Product 5.3 (CPDC—S&A 5.3) was established by Charter on October 12, 2006. CPDC—S&A 5.3 is the Federal Advisory Committee charged with responsibility to develop a draft Synthesis and Assessment Product that addresses CCSP Topic 5.3: ''Decision-Support Experiments and Evaluations Using Seasonal to Interannual Forecasts and Observational Data''.

Time and Date: The meeting will be held Monday, December 11, 2006 from 11 a.m. to 1 p.m. This time and the agenda topics described below are subject to change. Refer to the Web page *http://www.climate.noaa.gov/index.jsp?pg=./ccsp/53.jsp* for the most up-to-date meeting agenda.

Place: The meeting will be held via teleconference. Please contact Dr. Nancy Beller-Simms for further information (contact information follows).

Status: The meeting will be open to public participation with a 30-minute public comment period on December 11 from 12:30–1 p.m. (times are dependent on number of participants; check Web site to confirm this time). In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received by the CPDC—S&A 5.3 Designated Federal Official by December 5, 2006 to provide sufficient time for review. Written comments received after that date will be distributed to the CPDC—S&A 5.3, but may not be reviewed prior to the meeting date.

Matters to Be Considered: The meeting will include, but not be limited to, the following topics: (1) Discussion of procedures for completion of the first draft of the Synthesis and Assessment Product 5.3; (2) Discussion of plans for completion and submission of future drafts and procedures; (3) Discussion of a stakeholder workshop to be held in early January.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Beller-Simms, Designated Federal Official, CPDC—S&A 5.3 (NOAA Climate Program Office, 1315 East West Highway, Room 12221, Silver Spring, Maryland 20910. Phone: 301–734–1200, Fax: 301–713–0515, E-mail: *Nancy.Beller-Simms@noaa.gov*) or visit the Web site at *http://www.climate.noaa.gov/index.jsp?pg=./ccsp/53.jsp*.

Dated: November 14, 2006.

Mark E. Brown,

Chief Financial Officer and Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E6–19515 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111506B]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Panel, composed of representatives from the National Marine Fisheries Service's Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Monday, December 11, 2006, from 12 p.m. to 6 p.m. and Tuesday, December 12, 2006, from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza, Two Harmon Plaza, Secaucus, NJ 07094, telephone: (201) 348–6900.

Council address: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904, telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review the status of the new research vessel FSV Henry B. Bigelow and evaluate survey protocols for the new survey.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: November 15, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–19531 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111406H]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a council workshop.

SUMMARY: The North Pacific Fishery Management Council (Council) will hold a workshop on potential gear modification regulations as a part of the analysis for the Bering Sea Habitat Conservation analysis.

DATES: The workshop will be held on Thursday, December 7, 2006, at 6:30 p.m.

ADDRESSES: The workshop will be held at the Hilton Hotel, 500 West 3rd Avenue, in the Dillingham/Katmai Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cathy Coon, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The purpose of the workshop will be to discuss practical issues surrounding potential requirements for trawl sweeps in Bering Sea bottom trawl fisheries. Bottom trawl gear modifications are being considered as an alternative to reduce the impacts of fishing on benthic habitat in the Bering Sea. Research has indicated that adding discs or rollers to the sweep reduces bottom contact without substantially reducing catch rates of target species. Details of a gear requirement, such as disc size, composition, spacing, attachment, and enforcement have not yet been determined. While testimony before the Council and its committees will be the venue to address whether such regulations should be pursued, this workshop provides a venue to gather practical information, identify issues relative to enforcement and implementation of potential regulations, and identify workable solutions.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: November 15, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–19525 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111406G]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The meetings will be held on December 4, 2006 through December 12, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 West Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W.

4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Gail Bendixen, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. on Wednesday, December 6, continuing through December 12, 2006. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, December 4 and continue through Saturday December 9. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Wednesday, December 6 and continue through Friday December 8, 2006. The Enforcement Committee will meet Tuesday, December 5, from 9 a.m. to 12 noon, in the Birch/Willow Room. All meetings are open to the public, except executive sessions.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

a. Executive Director's Report

b. NMFS Management Report (including Resource Access Management Division crab management report)

c. North Pacific Research Board Report

d. Enforcement Report

e. U.S. Coast Guard Report

f. Alaska Department of Fish & Game Report (including review of halibut subsistence survey report)

g. U.S. Fish & Wildlife Service Report

h. Department of State Report

i. Protected Species Report (including Marine Mammal Protected Act List of Fisheries for 2007, Adak area pollock study, update on consultation, SSC review of ranking tool)

2. Charter Halibut Management: Status report on 2005 Guideline Harvest Levels (GHLs) and committee report; review discussion paper on 5–fish limit, and committee report and action as necessary; review discussion paper on Halibut Act proposed amendment and committee report, and action as necessary; review separate accountability issue and committee report and action as necessary; review moratorium discussion paper and committee report; review discussion paper on allocations/shares and committee report and action as necessary; review discussion paper on allocations/shares and committee report and action as necessary.

3. Maximum Retainable Amounts (MRA) Adjustments: Final action on amendment.

4. Trawl License Limitation Program Recency: Preliminary review of analysis and direction as necessary.

5. Gulf of Alaska (GOA) Rationalization: Review analysis and refine alternatives.

6. Seabird Interactions: Initial review of Environmental Assessment/ Regulatory Impact Review (EA/RIR).

7. Groundfish Management: Receive report on summary of comments on Environmental Impact Statement (EIS); review GOA Stock Assessment Fishery Evaluation Report (SAFE), adopt final harvest specifications for 2007/08; review Bering Sea Aleutian Islands (BS/AI) SAFE, adopt final harvest specifications for 2007/08; review Adak Experimental Fishing Permit (EFP).

8. Prohibited species bycatch: Final action on Vessel Incentive Program (VIP) repeal amendment package; Review EFP for Salmon Bycatch.

9. Bering Sea Habitat Conservation: Receive report on gear research and finalize alternatives for analysis (T).

10. Staff Tasking: Review Committees and tasking and take action as necessary; review progress on the Arctic management, and action as necessary; refine Programmatic Environmental Impact statement management policy workplan.

11. Other Business

The SSC agenda will include the following issues:

a. North Pacific Research Board report

b. Protected Species

c. Charter Halibut moratorium

d. Trawl LLP Recency

e. Seabird Interactions

f. Groundfish Management

g. EFP Review

h. Bering Sea Habitat Conservation

i. BS/AI Crab Management

The Advisory Panel will address the same agenda issues as the Council.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 15, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–19526 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111406E]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a work session via conference call, which is open to the public.

DATES: The GMT will meet via conference call on Monday, December 4, 2006, from 1 p.m. until business is completed.

ADDRESSES: A public listening station will be available at the following location: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Bozzi, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT work session is to discuss the Trawl Individual Quota alternatives under development by the Council. Specifically, the GMT will continue to develop statements that address the management feasibility of particular aspects of the proposed alternatives. No management actions will be decided by the GMT on these issues. The GMT's statements will be provided to facilitate decision-making at the Council's Groundfish Allocation Committee (GAC) December 12–14, 2006 meeting, as well as to the Council and its advisory bodies at a later point.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to

those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

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

Dated: November 15, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–19524 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2006–0034]

Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Regulatory Flexibility Act permits an agency head to establish, for purposes of Regulatory Flexibility Act analysis and certification, one or more definitions of ''small business concern'' that are appropriate to the activities of the agency. Pursuant to this authority, the United States Patent and Trademark Office (USPTO) is establishing the Small Business Administration (SBA) business size standard for the purpose of paying reduced patent fees as the size standard for conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations.

DATES: *Effective Date:* November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Christina T. Donnell, Senior Petitions Attorney, Office of Petitions, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–3211, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Christina T. Donnell.

SUPPLEMENTARY INFORMATION: The USPTO is in this notice establishing the SBA business size standard for the purpose of paying reduced patent fees as the size standard for conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. The USPTO is not changing or proposing to change the definition of small entity for the purpose of paying reduced patent fees.

The patent statute provides that ''[f]ees charged under [35 U.S.C. 41](a), (b) and (d)(1) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Director.'' 35 U.S.C. 41(h)(1). The SBA defines a small business concern for the purpose of paying reduced patent fees as one: ''(a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this section.'' 13 CFR 121.802.

The USPTO uses the SBA business size standard for the purpose of paying reduced patent fees in 13 CFR 121.802 as the size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See e.g., Changes To Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan*, 69 FR 56481, 56530 (Sept. 21, 2004) (discussion indicating that small entities for purposes of the Regulatory Flexibility Act are considered a subset of the small entities for purposes of paying reduced patent fees). The USPTO has no business need (other than to conduct an analysis or make a certification under the Regulatory Flexibility Act) to collect information from patentees and patent applicants concerning whether they are a small business concern using the business size standards set forth in 13 CFR 121.201. Thus, the USPTO uses the SBA business size standard set forth in 13 CFR 121.802 as its size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act to avoid the need to gather data from patentees and patent applicants as to whether they are a small business concern as described in 13 CFR 121.201.

Comments and Responses: Pursuant to the Regulatory Flexibility Act, the USPTO consulted with SBA Advocacy and published a request for comments on the establishment of a business size standard (the business size standard set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees) for the purpose of USPTO Regulatory Flexibility Analysis for patent-related regulations. *See Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR 38388 (July 6, 2006), 1309 *Off. Gaz. Pat. Office* 37 (Aug. 1, 2006) (request for comments). SBA Advocacy convened a regulatory roundtable to discuss the USPTO's proposed business size standard (attended by USPTO representatives) on July 19, 2006, and the USPTO received seven written comments (from SBA Advocacy, the Professional Inventors Alliance, and five individuals) in response to the request for comments. The comments and responses to the comments follow:

Comment 1: SBA Advocacy commented, in pertinent part, that:

> On July 19, 2006, Advocacy convened a regulatory roundtable to discuss the USPTO's proposed size standard. Participants at the roundtable included industry personnel representing the interests of small businesses and independent inventors, USPTO personnel, representatives from the SBA Office of Size Standards, and Advocacy. During the roundtable, small entity representatives expressed reservations about the proposed size standard. They indicated that the standard would exclude a significant number of small entities. Further, they were concerned that the standard would not provide an accurate estimate of the number of small entities affected by the USPTO's regulations.
>
> Currently, patent applicants must claim small entity status by checking a box on their patent application. However, small entity representatives informed Advocacy that entities often choose not to claim small entity status for a variety of reasons. USPTO data systems track the number of patent applications that claim small entity status. The agency then uses the numbers to estimate the number of small entities affected by its rulemakings. The agency does not collect data on or count the specific entities that are submitting a patent application. As a result, the data collected by the USPTO does not provide an accurate estimate of the number of small entities affected by the agency's rules. Since the proposed size standard only tabulates the number of applicants claiming small entity status, and not actual small entities, Advocacy does not believe that it is the appropriate size standard for [Regulatory Flexibility Act] purposes.
>
> Advocacy appreciates the USPTO's challenge in identifying an appropriate size

standard for [Regulatory Flexibility Act] purposes. We agree with the agency's decision to request public comment on the proposed size standard. However, we urge the USPTO not to adopt a size standard that would adversely affect small entities. The proposed standard will not facilitate the USPTO's compliance with the [Regulatory Flexibility Act] since it will not adequately estimate the small entities affected by the agency's regulations. Advocacy suggests that the agency continue to work with our office to identify a more appropriate standard after reviewing public comments on the proposal.

Another individual comment also objected to the use of the SBA business size standard in 13 CFR 121.802 as the size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. The comment asserted that it was not unusual for a small business concern to file as a large entity to avoid the possibility of the patent being subsequently invalidated because of an improper assertion of small entity status. Additionally, the comment asserted that the number of small business concerns affected by the USPTO's rule making is much greater than the number of small entity applicants assessed by the USPTO. Alternatively, several individual comments supported the USPTO's definition of small business concern for Regulatory Flexibility Act purposes.

Response: The USPTO does not consider the arguments that it significantly undercounts the number of small entities affected by its rule makings to be persuasive. On July 19, 2006, representatives from the USPTO attended SBA Advocacy's roundtable and met with representatives from the SBA, SBA Advocacy, the Intellectual Property Owners Association, the Association for Competitive Technology, the American Intellectual Property Law Association, and the United Inventors Association. The USPTO received anecdotal feedback at the SBA Advocacy roundtable that the USPTO significantly undercounts the number of small entities affected by its rule makings when the USPTO relies upon the small entity data as contained in the USPTO's Patent Application Locating and Monitoring (PALM) system. The USPTO, however, has not been provided with any data or other specific information to substantiate this anecdotal information. In addition, none of the groups whose representatives were present at the SBA Advocacy roundtable (except for SBA Advocacy) submitted a comment in response to the USPTO's request for comments on the USPTO's definition of small business concern for Regulatory Flexibility Act purposes. In support of the contention that the small entity data in PALM significantly undercounts the number of small entities, the representatives at the SBA Advocacy roundtable and the comments asserted that small entities routinely decline to claim small entity status because: (1) Applicants must claim small entity status by checking a box on a particular USPTO form; (2) small entities consider the fifty percent reduction in patent fees negligible relative to the overall cost of obtaining a patent; and (3) there are negative legal consequences if small entity status is claimed or is claimed improperly.

The small entity data contained in the PALM system is collected from patent applicants on the basis of whether the applicant claims small entity status for the purpose of paying patent fees. Section 4502(b) of the American Inventors Protection Act of 1999 (AIPA) charged the Government Accountability Office (GAO) with conducting a study of the impact of the AIPA's eighteen-month publication provisions, which included a study of any correlation of the status of the applicant (small entity or non-small entity) and the eighteen-month publication of applications. *See* Public Law 106–113, 113 Stat. 1501, 1501A–552–53 (1999). The GAO analyzed the data in the USPTO's PALM system and deemed it sufficiently reliable for purposes of conducting the study mandated by the AIPA. *See Information about the Publication Provisions of the American Inventors Protection Act*, GAO–04–603 at 14–15 (2004).

The USPTO representatives indicated at the SBA Advocacy roundtable that to collect small entity data with the reliability being urged by SBA Advocacy (or of greater reliability than is currently contained in the USPTO's PALM system) would compel the USPTO to require all patent applicants to affirmatively state whether they are or are not a small entity. No party present at the SBA Advocacy roundtable advocated the adoption of such a requirement. In addition, the SBA Advocacy comment does not suggest any viable alternative to the USPTO's reliance upon the data on small entities contained in the USPTO's PALM system for Regulatory Flexibility Act analysis or certification purposes. Therefore, the USPTO considers the data on small entities in the USPTO's PALM system to be sufficiently reliable (especially in light of the absence of any viable preferable alternatives) for use in conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations.

The statement that patent applicants must claim small entity status by checking a box on a particular USPTO form is not correct. The USPTO revised 37 CFR 1.27 in September of 2000 to provide that patent applicants may claim small entity status by: (1) Providing a written assertion of entitlement to small entity status (37 CFR 1.27(c)(1)); or (2) paying the basic filing or basic national fee in the small entity amount (37 CFR 1.27(c)(3)). *See Changes to Implement the Patent Business Goals*, 65 FR 64603, 54609–15, 54659–61 (Sept. 8, 2000) (final rule). The USPTO includes a box next to a written assertion of entitlement to small entity status on its application transmittal form, which patent applicants may use to claim small entity status when filing a patent application (37 CFR 1.27(c)(1)). The USPTO, however, does not require applicants to check this box on the application transmittal form (or even use the application transmittal form) to claim small entity status. Therefore, the USPTO does not believe that small entities routinely decline to claim small entity status due to the USPTO's requirements for establishing small entity status.

The argument that small entities consider the fifty percent reduction in patent fees to be negligible is likewise unpersuasive. As introduced and reported out of the House Committee on the Judiciary, the United States Patent and Trademark Fee Modernization Act of 2003 did not contain a small entity reduction for the patent search fee. *See The United States Patent and Trademark Fee Modernization Act of 2003*, H.R. 1561, 109th Cong., § 2 (2003). During the floor debate on the United States Patent and Trademark Fee Modernization Act, the following amendments were necessary to address small entity concerns and secure passage of this legislation by the House of Representatives: (1) A fifty percent reduction in the patent search fee for small entities; (2) a seventy-five percent reduction in the patent filing fee for small entities who file electronically; and (3) a study of the effects of patent fees on the ability of small entities to file patent applications. *See United States Patent and Trademark Fee Modernization Act of 2004*, 150 Cong. Rec. H793, H803 (daily ed. Mar. 3, 2004) (floor debate and passage of United States Patent and Trademark Fee Modernization Act of 2004 by the House of Representatives). The USPTO does not believe that small entities would have sought these changes to the United States Patent and Trademark Fee

Modernization Act of 2004 if a substantial number of small entities considered the fifty percent reduction in patent fees to be negligible.

The argument concerning negative legal consequences if small entity status is claimed or is claimed improperly is similarly not persuasive. The rules of practice provide that: ''[i]f status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon compliance with the [requirements of 37 CFR 1.28(c)].'' 37 CFR 1.28(c). In the mid-1990s, there were District Court decisions in which a patentee faced negative legal consequences for erroneously or improperly claiming small entity status. *See Haden Schweitzer Corp.* v. *Arthur B. Myr Industries, Inc.*, 901 F. Supp. 1235, 36 U.S.P.Q.2d 1020 (E.D. Mich. 1995) (failure to pay maintenance fee in the correct amount results in intervening rights under 35 U.S.C. 41(c)(2)); and (2) *DH Technology, Inc.* v. *Synergstex International, Inc.*, 937 F. Supp. 902, 40 U.S.P.Q.2d 1754 (N.D. Cal. 1996) (failure to timely pay issue fee in the correct amount results in patent lapse under 35 U.S.C. 151); *but see Jewish Hospital of St. Louis* v. *Idexx Laboratories*, 951 F. Supp 1, 42 U.S.P.Q.2d 1720 (D. Me. 1996) (correction of improper small entity fee payment in compliance with 37 CFR 1.28 does not result in patent lapse). In light of the uncertainty that existed in the mid-1990s concerning the consequences of erroneously claiming small entity status, the Office advised applicants and patentees at that time that they could avoid this uncertainty by not claiming small entity status unless it is absolutely certain that the applicant or patentee is entitled to small entity status (*i.e.*, resolving any doubt, uncertainty, or lack of information in favor of payment of the full fee). *See Changes to Patent Practice and Procedure*, 62 FR 53131, 53135 (Oct. 10, 1997); *see also DH Technology*, 937 F. Supp. at 910, 40 U.S.P.Q.2d at 1761 (''where there is the slightest doubt about an applicant's entitlement to claim small entity status, the applicant would be foolish not to pay the full * * * fee'').

The U.S. Court of Appeals for the Federal Circuit (Federal Circuit), however, reversed the District Court's decision in *DH Technology* and held that an applicant may correct an erroneous payment of patent fees in the small entity amount under 37 CFR 1.28 without penalty, such as patent lapse, as long as small entity status was established in good faith and the small entity fees were paid in good faith. *See DH Tech.* v. *Synergystex Int'l*, 154 F.3d 1333, 1343, 47 U.S.P.Q.2d 1865, 1872 (Fed. Cir. 1998). Thus, subsequent to the Federal Circuit's decision in *DH Technology*, the only patent applicants or patentees who face negative legal consequences from claiming or erroneously claiming small entity status are those applicants who have no basis for making a good faith claim to small entity status. Therefore, the USPTO does not believe that a significant number of small entities currently decline to claim small entity status to avoid negative legal consequences (*i.e.*, the patent being invalidated) due to the applicant claiming or erroneously claiming small entity status.

Finally, no party to the SBA Advocacy roundtable or other comment suggested that the USPTO should use the business size standards set forth in 13 CFR 121.201 for purposes of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations.

Comment 2: One comment requested clarification as to whether a license to a non-small entity that arises only impliedly negates small entity status for an applicant or patentee. The comment stated that the situation of an implied license to a non-small entity frequently occurs when the invention is embodied in software, and the software is mass-marketed under a standard shrink-wrap license. The comment asserted that a shrink-wrap agreement typically grants a ''license'' without indicating the intellectual property rights for which the ''license'' is granted. The comment contended that frequently the licensee cannot use the software without using the patented invention and that the law often implies a license under these circumstances. Additionally, the comment asserted that the current definition of small business concern excludes any small entity that licensed the invention to a non-small entity; however, the definition does not limit the exclusion to only those small business concerns that explicitly licensed the invention. Therefore, the comment suggested that the USPTO adopt the following language: ''(b) which has not assigned, granted, conveyed, or explicitly licensed (and is under no obligation to do so) any rights in the invention * * * .'' Lastly, the comment averred that some practitioners do not claim small entity status for software-embodied inventions, even though the applicant or patentee is entitled to the benefit of small entity status, because the applicant or patentee is usually unaware if or when the mass-market software production is licensed by a non-small entity.

Response: The scope of the term ''license'' in the context of entitlement to small entity status was previously discussed in the SBA rule making to define small entity for purposes of a reduction in patent fees for such a small entity. Specifically, the SBA responded as follows:

> Two comments raised questions about the intended scope of the term ''license.'' It was suggested that clarification is needed as to what is included within the scope of the term. One comment suggested that, ''[a]t the very least, the record should reflect that the definition is not intended to reach implied licenses to use and resell patented articles purchased from a small business.'' The comment is correct insofar as it suggests that such ''implied licenses'' are not intended to be included within the scope of the term. Likewise, an order by the applicant to a firm to build a proto-type machine or product for the applicant's own use is not considered to constitute a license for purposes of the definition.
>
> Another suggestion was that the regulation be reworded to deny small business status where revenue above a certain dollar amount was received from licensing rights under the invention to a concern which could not qualify as a small entity. It was also suggested that the term ''exclusive license of any of the rights in the invention'' be used instead of the term ''license.'' The latter two suggestions have not been adopted. Adoption of these suggestions would cause the regulation to become more complicated, and does not appear necessary to aid small concerns in accord with the purposes of the legislation. In addition, it could substantially broaden the number of concerns which could qualify with a resulting excessive loss of revenue to the Patent and Trademark Office. It is not seen likely that the restriction on licensing would unduly or adversely affect the ability of the small business concern to participate in the patent system.

Definition of Small Business for Paying Reduced Patent Fees Under Title 35, United States Code, 47 FR 43272 (Sept. 30, 1982) (final rule). The USPTO did not propose to change the definition of a small business concern for the purpose of paying reduced patent fees. Rather, the USPTO was inviting public comment on the establishment of the SBA business size standard in 13 CFR 121.802 as the size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. Therefore, the suggested change is not adopted.

Comment 3: One comment suggested that part (b) of the SBA's definition of a small business concern, specifying an entity ''which has not assigned, granted, conveyed or licensed * * * any rights in the invention'' to a large entity should be deleted from the definition as being inappropriate. The comment stated that a license or other agreement between a small entity and a large entity does not typically result in substantial income to the small entity. The comment further asserted that in most cases the small entity retains the financial responsibility to pay the patent prosecution and maintenance fees, without any additional income from the large entity. The comment contended that if the license or other agreement is later terminated, the termination agreement often allows the large entity to retain some rights without further payment. Additionally, the termination agreement may be so complex that the small entity may not be able to overcome a charge of inequitable conduct by a third party. Alternatively, one of the comments stated that the adopted size standard does not unfairly burden small entities because a large entity typically pays the cost of patent prosecution when a small entity licenses its technology to the large entity.

Response: 13 CFR 121.802 is the substantive provision for determining whether an entity is a small business concern for purposes of paying reduced patent fees. The USPTO did not propose to change the definition of a small business concern for the purpose of paying reduced patent fees. Rather, the USPTO was inviting public comment on the establishment of the SBA business size standard in 13 CFR 121.802 as the size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations.

Moreover, the suggestion was previously considered and rejected in the rule making to implement the reduction in patent fees for small entities. Specifically, a past comment suggested that 37 CFR 1.27 should be corrected to indicate that a small business concern would be entitled to pay reduced patent fees even though the small business concern may grant a non-exclusive or an exclusive license to a non-small entity. The USPTO responded as follows:

Section 1.27 requires that the concern qualify as a small business concern as defined in § 1.9(d). Section 1.9(d) defines a small business concern by incorporating 13 CFR 121.3–18, which in turn defines a small business concern as one not exceeding a particular size ''which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under this section.'' The intent of both 13 CFR 121.3–18 and 37 CFR 1.9(d) and 1.27(c) is to limit the payment of reduced fees under section 41(a) and (b) of Title 35, United States Code, to those situations in which all of the rights in the invention are owned by small entities, i.e., independent inventors, small business concerns, or nonprofit organizations. To do otherwise would be clearly contrary to the intended purpose of the legislation which contains no indication that fees are to be reduced in circumstances where rights are owned by non-small entities. Adopting the suggestion might, for example, permit a non-small entity to transfer patent rights to a small business concern which would pay the reduced fees and grant an exclusive license to the non-small entity.

Revision of Patent and Trademark Fees, 47 FR 43273 (Sept. 30, 1982) (final rule). Therefore, the suggested change is not adopted.

Comment 4: One comment noted an error in the following text: ''The SBA Advocacy, however, has questioned whether the USPTO's size standard is under-inclusive because it excludes any business concern that has assigned, granted, conveyed, or licensed (and is under no obligation to do so).'' The comment suggested the following correction: ''The SBA Advocacy, however, has questioned whether the USPTO's size standard is under-inclusive because it excludes any business concern that has assigned, granted, conveyed, or licensed (or is under an obligation to do so).''

Response: The USPTO notes that the text at issue should have read: ''The SBA Advocacy, however, has questioned whether the USPTO's size standard is under-inclusive because it excludes any business concern that has assigned, granted, conveyed, or licensed (or is under an obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under [13 CFR 1.802].''

Establishment of a Definition of ''Small Business Concern'' for Purposes of the USPTO Conducting an Analysis or Making a Certification under the Regulatory Flexibility Act for Patent-Related Regulations: The Regulatory Flexibility Act permits an agency head to establish, for purposes of Regulatory Flexibility Act analysis and certification, one or more definitions of ''small business concern'' that are appropriate to the activities of the agency, after consultation with the Office of Advocacy of the Small Business Administration and opportunity for public comment. *See* 5 U.S.C. 601(3) and 13 CFR 121.903(c). The USPTO consulted with SBA Advocacy and published a request for comments on the establishment of a business size standard (the SBA business size standard set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees) for USPTO Regulatory Flexibility Analysis for patent-related regulations. *See Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 38388–89, 1309 *Off. Gaz. Pat. Office* at 37–38. Therefore, the USPTO is establishing the following definition of small business concern for purposes of the USPTO conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations: A small business concern for Regulatory Flexibility Act purposes for patent-related regulations is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition.

Dated: November 9, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E6–19573 Filed 11–17–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity

AGENCY: Department of Defense.

ACTION: Notice of a TRICARE demonstration project for the State of Alaska

SUMMARY: This notice is to advise interested parties of a Military Health System (MHS) demonstration project entitled TRICARE Provider Reimbursement Demonstration Project for the State of Alaska. The delivery of health care services in the State of Alaska represents a unique situation that cannot be addressed fully by strictly applying the same reimbursement rules that apply to TRICARE programs in the other 49 states without some modification. Typically, provider payments are the same as under Medicare, unless the Department has taken specific action to increase payment rates in response to a particular, severe access problem in a location. Under this demonstration, payment rates for physicians and other non-institutional individual professional providers in the State of Alaska will be set at a rate higher than the Medicare rate. The demonstration project will test the effect of this change on provider participation in TRICARE, beneficiary access to care, cost of health care services, military medical readiness, morale and welfare. In particular, the demonstration will test whether the increased costs of provider payments are offset in whole or part by savings in travel costs, lost duty time, and other factors. This demonstration will be conducted under statutory authority provided in 10 U.S.C. 1092.

EFFECTIVE DATE: January 1, 2007. This demonstration will remain in effect for a period of 3 years.

ADDRESSES: TRICARE Management Activity (TMA), TRICARE Operations Directorate, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: CAPT Cynthia DiLorenzo, Office of the Assistant Secretary of Defense (Health Affairs)—TRICARE Management Activity, telephone (619) 236–5304.

SUPPLEMENTARY INFORMATION:

A. Background

Alaska is a land of extremes and contradictions. It is the largest state in the United States, containing one-fifth of all United States land, yet is one of the least populated. It boasts both the highest mountain in North America and the longest coastline of any state. There are just a few major roads providing residents the ability to travel to the major cities in the State. Other means of transportation are by boat or plane. which places severe hardships on beneficiaries attempting to access needed health care services. It has geography characterized by harsh ice islands and desert tundra. Alaska's citizens are no less diverse.

Alaska's population is just under 627,000. Of these, approximately 71,000 are Military Health System (MHS) beneficiaries. More than half of these beneficiaries reside in south-central Alaska in the State's largest city—Anchorage. Alaska's military treatment facilities (MTFs) meet a large percentage of Alaska's beneficiary health care needs. Those remaining are referred to local civilian providers or to the lower 48 states. Access to health care services in Alaska is often severely limited by the overall dearth of providers, their reluctance to accept TRICARE payment rates, transportation issues, and other factors. In response TRICARE has taken steps to increase payment rates, as detailed below.

B. Past Efforts to Address Access Issues

In 2000, TRICARE created a new payment locality encompassing all of Alaska except Anchorage, and increased payment rates by 28 percent in the new locality. In 2004, pursuant to specific Congressional action, Medicare increased its payment rates in Alaska by 50 percent, and TRICARE rates were increased to match the new Medicare rates. The higher Medicare rates continued though the end of 2005, when the special Congressional provision expired; the Medicare rates reverted to former levels. TRICARE rates reverted to their former level, 28 percent higher than Medicare rates.

C. Other Payers in Alaska

As noted, TRICARE payment rates in Alaska are 28 percent above Medicare rates. It is estimated that commercial rates in Alaska are about 70 percent above TRICARE rates. The Department of Veterans' Affairs purchases some health care services for Veterans in Alaska, using a specially developed rate schedule. Most rates are higher than TRICARE rates, and a few are lower; on average, the VA rates are approximately 35 percent higher than TRICARE rates.

D. Current Status of Access

Large numbers of providers in Alaska are considering no longer treating military beneficiaries owing to low payment rates. Over 70 providers or provider groups in a wide range of specialties are of concern, some of them the sole provider in Alaska for their specialty.

The alternatives to local purchase of services for military officials are to transport patients to Seattle or another location for treatment, or to relocate scarce military medical assets to Alaska to provide services. The first is an expensive proposition that brings with it considerable lost duty time and other complications; the second approach is untenable in wartime, and as a practical matter medical practice in Alaska would not provide sufficient opportunity for military medical specialists to maintain their skills.

Under a recent policy change, TRICARE limits its payment in cases where Medicare providers ''opt out'' of Medicare and enter into private contracts with Medicare patients. This may be problematic in Alaska, with the very small number of providers available.

E. Description of Demonstration Project

Under this demonstration, DoD will waive, for services provided in the State of Alaska, the provisions of 10 U.S.C. section 1079(h) that require TRICARE payments for physicians and other individual professional, non-institutional providers to be the same as under Medicare. Instead, TRICARE will adopt a rate that is 1.35 times the current TRICARE allowable rate. In addition, DoD will be the primary payer for services obtained from providers who have opted out of Medicare by Medicare-eligible uniformed services beneficiaries.

This action will directly increase reimbursement levels for providers, and is expected to result in increased access to care for military beneficiaries; reduced travel to Seattle, accompanied by a reduction in lost duty days; and improved morale for military members and families as a result of increased access and reduced separation.

F. Implementation

The demonstration will go into effect on January 1, 2007.

G. Evaluation

An independent evaluation of the demonstration will be conducted. The evaluation will be designed to use a combination of administrative and survey measures of health care access to provide analyses and comment on the effectiveness of the demonstration in meeting its goal of improving beneficiary access to health care by maximizing the potential pool of health care providers in Alaska.

Dated: November 14, 2006.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–19553 Filed 11–17–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011]

Federal Acquisition Regulation; Information Collection; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0011).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning preaward survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408.) A request for public comments was published in the **Federal Register** at 71 FR 38867, July 10, 2006. No comments were received. The clearance currently expires on January 31, 2007.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 20, 2006.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Ms. Linda Nelson, Contract Policy Division, GSA, (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.*, capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement.

B. Annual Reporting Burden

Respondents: *5,478*.

Responses Per Respondent: *1*.

Total Responses: *5,478*.

Hours Per Response: *20.8*.

Total Burden Hours: *113,942*.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408), in all correspondence.

Dated: November 13, 2006.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 06–9268 Filed 11–17–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on December 14, 2006 from 0800 hrs until 1830 and December 15, 2006 from 0800 hrs until 1600 at the Pentagon. The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: November 13, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9271 Filed 11–17–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to introduce new members and conduct orientation training. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed

below no later than 5 p.m., 27 November 2006. Oral presentations by members of the public will be permitted only on Monday, 4 December 2006 from 4:30 p.m. to 5 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed below with one (1) copy of the presentation by 5 p.m., 1 December 2006 and bring 35 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement must submit 35 copies of the statement to the DACOWITS staff by 5 p.m. on 1 December 2006.

DATES: 4 December 2006, 8:30 a.m.–5 p.m.; and 5 December 2006, 8:30 a.m.–5 p.m.

Location: Double Tree Hotel Crystal City National Airport, 300 Army-,Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: CPT Arnalda Magloire, USA, DACOWITS, 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION: Meeting agenda.

Monday, 4 December 2006, 8:30 a.m.–5 p.m.

Welcome & Administrative Remarks.
Navy Staff Judge Advocate Corps Presentation.
2006 Report Review.
Public Forum.

Tuesday, 5 December 2006, 8:30 a.m.–5 p.m.

2007 Topic Development.
Representatives of the Manpower and Reserve Affairs Panel.

Note: Exact order may vary.

Dated: November 13, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–9270 Filed 11–17–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 20, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 14, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Extension.

Title: Grants to States for Training Incarcerated Youth Offenders Application, Annual Report, and Eligible Population Data Request Form.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 2,147.

Abstract: To receive an award under the Grants to States for Training Incarcerated Youth Offenders programs, State Correctional Education Agencies (SCEA) must submit an application that includes a state plan describing how the program will operate. In addition, states must also submit an Eligible Population Data Request Form is necessary to run the annual allocation formula and an evaluation report. The latter two collections must be submitted each of the three grant years.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3176. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–19579 Filed 11–17–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 20, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 14, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Mathematics and Science Partnerships Program: Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 600.

Burden Hours: 6,650.

Abstract: The Mathematics and Science Partnerships program is a formula grant program to the States in which states make competitive awards to projects. The authorizing legislation, Title II, Part B, Section 2202(f) of the Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act of 2001, requires all locally funded projects to report annually to the Secretary documenting progress towards goals and objectives. The Annual Performance Report (APR), an online reporting tool, will provide projects an opportunity to describe partnerships, report on the impact of the projects, share effective professional development strategies, and help ED program officials to examine outcomes across multiple projects. The APR is a revision of a currently OMB-approved annual performance report and reflects program expansion and the consolidation of several monitoring tools.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3173. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–19580 Filed 11–17–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 20, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 14, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Safe and Drug Free Schools

Type of Review: Extension.

Title: Gun-Free Schools Act Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,221. Burden Hours: 14,756.

Abstract: The Gun-Free Schools Act (GFSA) requires each State to provide annual reports to the Secretary concerning implementation of the Act's requirements regarding expulsions from schools resulting from firearms violations. The GFSA requires each State receiving ESEA funds to have in effect a State law requiring LEAs to expel from school for a period of not less than one year a student found to have brought a firearm to school or to have possessed a firearm at school. The GFSA also requires LEAs that receive ESEA funds to adopt a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm to school or possesses a firearm at school.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3181. When you access the information collection, click on ''Download Attachments'' to

view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–19581 Filed 11–17–06; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting for the Technical Guidelines Development Committee.

DATE AND TIME: Monday, December 4, 2006, 9 a.m. to 5:30 p.m. EST. Tuesday, December 5, 2006, 8:30 a.m. to 2 p.m. EST.

PLACE: National Institute of Standards and Technology, 100 Bureau Drive, Building 101, Green Auditorium, Gaithersburg, Maryland 20899–8900.

STATUS: This meeting will be open to the public. There is no fee to attend, but, due to security requirements, advance registration is required. Registration information will be available at *http://www.vote.nist.gov* by November 4, 2006.

SUMMARY: The Technical Guidelines Development Committee (the ''Development Committee'') has scheduled a plenary meeting for December 4th & 5th, 2006. The Committee was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Development Committee held previous meetings on July 9, 2004; January 18 and 19, 2005; March 9, 2005; April 20 and 21, 2005; September 29, 2005 and March 29, 2006. The purpose of the seventh meeting of the Development Committee will be to review and approve draft documents that will form the bases for recommendations for future voluntary voting system guidelines to the EAC. The draft documents respond to tasks defined in resolutions passed at previous Technical Guideline Development Committee meetings.

SUPPLEMENTARY INFORMATION: The Technical Guidelines Department Committee (the ''Development Committee'') has scheduled a plenary meeting for December 4th & 5th, 2006. The Committee was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The Technical Guidelines Development Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather information and public input on relevant issues. The information gathered by the working groups was analyzed at the second meeting of the Development Committee January 18 & 19, 2005. Resolutions were debated and adopted by the TGDC at the January plenary session. The resolutions defined technical work tasks for NIST that will assist the TGDC in developing recommendations for voluntary voting system guidelines. At the March 9, 2005 meeting, NIST scientists presented preliminary reports on technical work tasks defined in resolutions adopted at the January plenary meeting and adopted one additional resolution. The Development Committee approved initial recommendations for voluntary voting system guidelines at the April 20th & 21st, 2005 meeting. The Development Committee began consideration of future recommendations for voluntary voting system guidelines at the September 29, 2005 meeting. At the March 29th, 2006 meeting, the Development Committee approved draft technical guidance documents that will form the bases for recommendations for future voluntary voting system guidelines and passed an additional resolution. The Committee will review additional technical guidance documents for recommendations for future voluntary voting system guidelines at the December 4th & 5th, 2006 meeting.

CONTACT INFORMATION: Allan Eustis 301–975–5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after the meeting, written comments should be addressed to the contact person indicated above, or to *Voting@nist.gov*.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 06–9310 Filed 11–16–06; 11:51 am]

BILLING CODE 6820–KF–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting.

DATE AND TIME: Thursday, December 7, 2006, 10 a.m.–3p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005. (Metro Stop: Metro Center).

AGENDA: The Commission will receive presentations on public comments received for the DRAFT Procedural Manual for Voting System Testing and Certification Program and the proposed final document will be considered for approval. The Commission will receive presentations from election officials, community interest groups, academicians and technology experts regarding the 2006 election. The Commission will elect officers for 2007 and consider other administrative matters.

This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 06–9311 Filed 11–16–06; 11:51 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Change in Scoping Meeting Schedule for the Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement—Complex 2030

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of Change in Scoping Meeting Schedule.

SUMMARY: On October 19, 2006, NNSA published a Notice of Intent (NOI) to Prepare a *Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement—Complex 2030* (Complex

2030 Supplemental PEIS; DOE/EIS–0236–S4; 71 FR 61731). NNSA has changed the location of the public scoping meeting scheduled for Los Alamos, New Mexico, and has extended the time for the public scoping meeting scheduled for Livermore, California.

DATES: The NOI identified the Mesa Public Library as the location of the public scoping meeting in Los Alamos, New Mexico. NNSA will instead hold the meeting at the Hilltop House Best Western, 400 Trinity Drive, Los Alamos, New Mexico. The meeting date and time, which are unchanged, are December 6, 2006, 10:30 a.m.–2:30 p.m.

The NOI listed the time of the meeting on December 12, 2006, in Livermore, California, as 11 a.m.–3 p.m. NNSA has extended the public comment portion of the meeting until 10 p.m. The meeting starting time of 11 a.m. is unchanged, and the meeting location is unchanged: Robert Livermore Community Center, 4444 East Avenue, Livermore, California.

NNSA is not changing the location or schedule for any other public scoping meeting announced in the NOI. This includes the meeting in Tracy, California, which still will be held on December 12, 2006, from 6 p.m.–10 p.m. at the Tracy Community Center, 950 East Street.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding these changes to Mr. Theodore A. Wyka, Complex 2030 Supplemental PEIS Document Manager, Office of Transformation, National Nuclear Security Administration (NA–10.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Questions also may be telephoned, toll free, to 1–800–832–0885 (ext. 63519) or e-mailed to *Complex2030@nnsa.doe.gov.* Written comments on the scope of the Complex 2030 Supplemental PEIS or requests to be placed on the document distribution list can be sent to the Document Manager. Additional information regarding Complex 2030 is available at *http://Complex2030PEIS.com.*

Issued in Washington, DC, on November 14, 2006.

Thomas P. D'Agostino,

Deputy Administrator for Defense Programs, National Nuclear Security Administration.

[FR Doc. E6–19590 Filed 11–17–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0929; FRL–8103–1]

Forum on State and Tribal Toxics Action; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the meeting of the Forum on State and Tribal Toxics Action (FOSTTA) to enable state and tribal leaders to collaborate with EPA on environmental protection and pollution prevention issues. Representatives and invited guests of the Chemical Information and Management Project (CIMP), the Pollution Prevention (P2) Project, and the Tribal Affairs Project (TAP), components of FOSTTA, will be meeting December 11, 2006. The meeting is being held to provide participants an opportunity to have in-depth discussions on issues concerning the environment and human health. This notice announces the location and times for the meeting and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meeting.

DATES: The meeting will be held on December 11, 2006, from 8 a.m. to 5 p.m.

Requests to participate in the meeting, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0929 must be received on or before December 7, 2006.

To request accommodation of a disability, please contact the technical contact person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Radisson Hotel & Suites Austin, 111 E. Cesar Chavez St., Austin, TX 78701, telephone number: (800) 333–3333, fax number: (512) 473–8399.

Requests to participate in the meeting, identified by docket ID number HQ–OPPT–2006–0929, may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Pam Buster, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8817; fax number: (202) 564–8813; e-mail address: *Buster.Pamela@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in FOSTTA and in hearing more about the perspectives of the States on EPA programs and the information exchange regarding important issues related to human health and environmental exposure to toxics. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. However, in the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. If you have any questions regarding the applicability of this action to a particular entity, consult the people listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPPT–2006–0929. Publicly available docket materials are available electronically at *http://www.regulations.gov* or, if only available in hard copy, at the OPPT Docket in the EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 EPA/DC Public Reading Room is (202)

566–1744, and the telephone number for the OPPT Docket Center is (202) 566–0280. Visitors to EPA are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA web site at *http://www.epa.gov/epahome/dockets.htm*.

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*.

II. Background

The Toxic Substances Control Act (TSCA), 15 U.S.C. 2609 section 10(g), authorizes EPA and other Federal agencies to establish and coordinate a system for exchange among Federal, state, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the CIMP focuses on EPA's chemical program and works to develop a more coordinated effort involving Federal, state, and tribal agencies. P2 promotes the prevention ethic across society, helping to integrate P2 into mainstream environmental activities at the Federal level and among the states and tribes. TAP concentrates on chemical and prevention issues that are most relevant to the tribes, including lead control and abatement, tribal traditional/subsistence life ways, and hazard communications and outreach. FOSTTA's vision is to focus on major policy-level issues of importance to states and tribes, recruit more senior state and tribal leaders, increase outreach to all 50 states and some 560 Federally recognized tribes, and vigorously seek ways to engage the states and tribes in ongoing substantive discussions on complex and oftentimes controversial environmental issues.

The Environmental Council of the States (ECOS), in partnership with the National Tribal Environmental Council (NTEC) and EPA's Office of Pollution Prevention and Toxics (OPPT), are co-sponsoring the meetings. As part of a cooperative agreement, ECOS and NTEC facilitate ongoing efforts of the state and tribal leaders and OPPT to increase understanding and improve collaboration on toxic chemicals and pollution prevention issues, and to continue a dialogue on how federal environmental programs can best be implemented among the states, tribes, and EPA.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2006–0929, must be received on or before December 7, 2006.

IV. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for state, tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will discuss collaboration on all environmental protection and pollution prevention issues. The states and the tribes identified the following tentative agenda items:

1. Summary of selected presentations to be made at the Conference on Characterizing Chemicals in Commerce: Using Data on High Production Volume (HPV) Chemicals, which is taking place December 12–14, 2006; see *http://www.NEWMOA.org/hpv* for more information.

2. P2 Program Assessment Rating Tool (PART) Review.

3. P2 integration across EPA.

4. Prioritization of OPPTS work activities under the OPPTS Tribal Strategy.

List of Subjects

Environmental protection.

Dated: November 14, 2006.

Barbara A. Cunningham,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 06–9274 Filed 11–16–06; 11:42 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8244–1; EPA–HQ–Docket ID No. EPA–ORD–2006–0939]

Draft Toxicological Reviews of Cyanobacterial Toxins: Anatoxin-a, Cylindrospermopsin and Microcystins LR, RR, YR and LA

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and external peer-review panel meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a forty-five day public comment period and an external peer-review panel meeting to review the external review draft documents entitled, ''Toxicological Reviews of Cyanobacterial Toxins: Anatoxin-a, Cylindrospermopsin and Microcystins LR, RR, YR and LA'' (NCEA–C–1743, NCEA–C–1763 and NCEA–C–1765). Cyanobacteria, commonly referred to as blue-green algae, are found in freshwater, estuarine and marine environments. Cyanobacteria, other freshwater algae, and their toxins are included as microbial contaminants on EPA's Office of Water (OW) Contaminant Candidate List (CCL). These draft assessments discuss potential human health effects of exposure to these cyanobacterial toxins for four durations—acute, short-term, subchronic and chronic—focusing on noncancer effects due to oral exposure.

The public comment period and the external peer review are separate processes that provide opportunities for all interested parties to comment on these documents. These documents were prepared by EPA's National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. EPA will use comments and recommendations from the public and the expert panel meeting to finalize the draft documents. EPA is releasing these draft documents solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. These documents have not been formally disseminated by EPA. They do not represent and should not be construed to represent any Agency policy or determination.

DATES: The public comment period will begin on November 20, 2006 and continue until January 4, 2007. The public may submit comments via *Regulations.gov* (see **SUPPLEMENTARY INFORMATION** below). The peer-review panel meeting will begin on January 10, 2007, at 9 a.m. and will end at 5 p.m.

The public may attend the peer-review panel meeting and are invited to provide oral statements at the commencement of the meeting (for more information refer to the instructions for registration below).

ADDRESSES: Eastern Research Group, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review panel meeting to review these draft documents. The external peer-review panel meeting will be held at EPA's Andrew W. Breidenbach Environmental Research Center (AWBERC) located at 26 W. Martin Luther King Drive, Cincinnati, OH. Observers may attend the peer review meeting by filling out the form found on the Web site, *https://www2.ergweb.com/projects/conferences/ncea/toxin.htm*, by calling Eastern Research Group, Inc.'s conference line between the hours of 9 a.m. and 5:30 p.m. EST at (781) 674–7374 or toll free at (800) 803–2833, or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration will begin December 15, 2006. Pre-registration is strongly recommended as space is limited, and registrations will be accepted on a first-come, first-served basis. The deadline for online pre-registration is January 3, 2007. Telephone and fax registrations will continue to be accepted after this date, as will on-site registration, if space allows. Public comments submitted to Regulations.gov by December 29, 2006, will be provided to the external peer review panel prior to the meeting.

The draft ''Toxicological Reviews of Cyanobacterial Toxins: Anatoxin-a, Cylindrospermopsin and Microcystins LR, RR, YR and LA'' are available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from the Technical Information Staff (TIS) at NCEA's Cincinnati office; telephone: (513) 569–7257; facsimile: (513) 569–7916. If you are requesting a paper copy, please provide your name, mailing address, and title of these documents. Copies are not available from Eastern Research Group, Inc.

FOR FURTHER INFORMATION CONTACT: Questions regarding information about, registration, and logistics for the external peer review workshop should be directed to Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02421–3136 beginning December 15, 2006; telephone: (781) 674–7374 or toll free at (800) 803–2833; facsimile: (781) 674–2906; or e-mail: *meetings@erg.com*.

If you have questions about the draft documents, contact Belinda Hawkins, National Center for Environmental Assessment, 26 W. Martin Luther King Drive (A–110), Cincinnati, OH; telephone: (513) 569–7523; facsimile: (513) 487–2542; e-mail: *hawkins.belinda@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established an official public docket for this action under docket ID number EPA–HQ–ORD–2006–0939. The official public docket consists of the documents referenced in this notice and a list of charge questions that have been submitted to the external peer reviewers. All documents are available on the Internet at *http://www.regulations.gov* by using the search function and corresponding docket identification number.

How to Submit Technical Comments to the Docket at http://www.regulations.gov

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0939 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* ORD *Docket@epa.gov*.
- *Fax:* (202) 566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is (202) 566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 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. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments in hard copy, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0939. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: November 13, 2006.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–19558 Filed 11–17–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0341; FRL–8057–1]

Implementation of the Pilot Voluntary Children's Chemical Evaluation Program; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is requesting comment on the implementation of the pilot phase of the Voluntary Children's Chemical Evaluation Program (VCCEP). VCCEP was designed to collect health effects, exposure, and risk information on chemicals to which children are likely to be exposed, and to make that information available to the public so the public may better understand the potential health risks to children associated with certain chemical exposures. EPA announced the program in December 2000 and the pilot began in 2001 when companies volunteered to sponsor their chemicals under VCCEP. At what is approximately the midpoint in the implementation of the pilot phase of VCCEP, EPA is preparing to evaluate how well it is meeting its objectives for VCCEP. To this end, EPA is seeking comments from participants and observers about the operations and experience under the VCCEP pilot to this point. If requested, EPA will hold a public meeting to take comment on the implementation of the pilot phase of VCCEP.

DATES: Comments must be received on or before January 19, 2007.

Requests for a public meeting must be received on or before December 11, 2006.

ADDRESSES: *To submit comments*: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0341, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2006–0341. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0341. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket, EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in EPA West, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA website at *http://www.epa.gov/epahome/dockets.htm*.

To request a public meeting: Submit your request, identified by docket ID number EPA–HQ–OPPT–2006–0341, to Catherine Roman by one of the following methods:

- *E-mail address*: *roman.catherine@epa.gov*.
- *Mail*: Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, ATTN: Catherine Roman.
- *Hand Delivery*: 1201 Constitution Ave., NW., Washington, DC, EPA East, ATTN: Catherine Roman. Ask the reception desk to call (202) 564–4780. Such deliveries should be made during normal working hours, 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone

number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Catherine Roman, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–4780; e-mail address: *roman.catherine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to those chemical manufacturers (including importers) who produce or import chemical substances that are subject to the Toxic Substances Control Act (TSCA), individuals or groups concerned with chemical testing and children's health, and animal welfare groups. Because other entities may also 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, 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 claimed CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is requesting comment from stakeholders, interested parties, and the general public on the implementation of the VCCEP pilot and is also evaluating the progress of the VCCEP pilot toward meeting its objectives. VCCEP was designed to collect health effects, exposure, and risk information on chemicals to which children are likely to be exposed, and to make that information available to the public so the public may better understand the potential health risks to children associated with certain chemical exposures, and to allow EPA and others to evaluate the risks of these chemicals so that mitigation measures may be taken as appropriate.

EPA announced VCCEP in a December 26, 2000 **Federal Register** notice (Ref. 1) and requested chemical manufacturers and importers to participate in a VCCEP pilot by voluntarily committing to sponsor an information collection on 23 chemicals. The VCCEP pilot is intended to allow EPA to gain insight as to how best to design and implement VCCEP in order to effectively provide the Agency and the public with the means to understand the potential health risks to children associated with exposure to chemicals to which children may be exposed. EPA intends the VCCEP pilot to be the means of identifying efficiencies which can be applied to the subsequent implementation of VCCEP.

Several factors were considered in selecting the 23 chemicals for the VCCEP pilot; they included substantial production/importation (one million lbs. or more per year), presence in the environment, and biomonitoring evidence of presence in humans. A detailed description of the selection process used by EPA is in the document entitled *Methodology for Selecting Chemicals for the Voluntary Children's Chemical Evaluation Program (VCCEP) Pilot* (Ref. 2).

The requested commitment for the VCCEP pilot was for Tier 1 information, with the potential for EPA to request participants to make additional commitments to Tier 2 and Tier 3 information based on an evaluation of the Tier 1 submission. As part of their Tier 1 commitments, sponsors were asked to include an expected submission date that, as described in the December 2000 notice, is based on the amount of time EPA considered necessary to gather the information (or perform testing, if necessary) and prepare the assessments. Other guidance on timeliness provided in the December 2000 notice included the following:

- Within 6 months from the publication of the December 2000 notice was the recommended deadline to commit to Tier 1.
- Within 4 months after announcing EPA's Data Needs Decision was the recommended deadline to commit to upper tiers.
- Within 1 month after receiving a chemical assessment was EPA's goal to make it publicly available on the VCCEP website.

During 2001, 35 companies and 10 consortia voluntarily committed to sponsor 20 of the 23 chemicals in the VCCEP pilot. Three of the twenty-three chemicals were not sponsored and remain unsponsored. Also in 2001, EPA arranged for a third party, Toxicology for Excellence in Risk Assessment (TERA), to organize and facilitate public Peer Consultation meetings to evaluate the chemical assessments to be submitted by the chemical sponsors. At a Peer Consultation meeting, a panel of scientific experts with extensive and broad experience in toxicity testing, exposure evaluation, or the specific chemical discuss the chemical assessment and offer their opinions on its adequacy and possible additional data needs. This discussion is held at a public meeting where interested parties may also present comments. TERA prepares a report summarizing the opinions expressed at the public meeting and submits this report to EPA. EPA considers this report when it reviews the chemical assessment prior to forming its decision regarding additional data needs of the chemical.

In terms of progress, by the end of August 2006, the VCCEP pilot sponsors had submitted Tier 1 chemical assessments for 12 of the 20 chemicals; all 12 chemical assessments had been evaluated in public Peer Consultation meetings; summary reports of the Peer Consultation meetings for the 12

chemical assessments were made available; and EPA had reviewed the Peer Consultation reports and issued Data Needs Decisions for 6 of the 12 chemicals. EPA is in the process of developing Data Needs Decisions for the remaining 6 chemicals.

In its six Data Needs Decisions, EPA decided that additional data were needed for three chemicals. A consortium of three companies organized by the American Chemistry Council (ACC) has agreed to proceed to Tier 2 of the VCCEP pilot and sponsor the additional information collection for one of the chemicals. The Tier 1 sponsor of the other two chemicals with additional data needs informed the Agency that it will not commit to participate in Tier 2 for those chemicals. For the other three chemicals for which Data Needs Decisions have been issued, EPA concluded that the Tier 1 assessments provide sufficient information to adequately characterize the risk to children of exposure to those chemicals, and EPA considers the evaluation of these three chemicals to be completed for purposes of the VCCEP pilot. To summarize the activity and progress of the VCCEP pilot through August 2006, the table in this unit indicates how many chemicals have completed successive stages in the VCCEP pilot:

Stages in the VCCEP Process	Number of chemicals which have completed each stage
Sponsor commitment to provide Tier 1 information	20
Tier 1 chemical assessment submitted	12 *
Tier 1 chemical assessment has gone through Peer Consultation	12
Peer Consultation report available	12
EPA issued a Data Needs Decision (3 chemicals had Tier 2 data needs, 3 chemicals did not have Tier 2 data needs.)	6
Received a sponsor commitment to provide Tier 2 information OR	1
Agency informed it will not receive sponsor commitment to provide Tier 2 information	2

* As noted on the VCCEP website, the submission of chemical assessments for four chemicals (ethylbenzene, ethylene dichloride, perchloroethylene, and trichloroethylene) has been delayed due to other commitments to develop the data as part of another effort or program.

The most recent information on the progress of specific chemicals in the VCCEP pilot is presented on the VCCEP website (*http://www.epa.gov/chemrtk/vccep*). Since the Fall of 2001, EPA has kept the public informed of activities in the VCCEP pilot through the VCCEP website. The website describes VCCEP and how it was developed. It also lists the chemicals and their sponsors, the date of sponsor commitments to each tier, the submission dates of chemical assessments, the dates of upcoming public Peer Consultation meetings, and the completion dates of Peer Consultation reports and EPA's Data Needs Decisions. Most importantly, the website makes the cited information available to the public by providing links to the chemical assessments, the Peer Consultation reports, and EPA's Data Needs Decisions.

In terms of timeliness for EPA, TERA, and the sponsors meeting the scheduled goals for the VCCEP pilot, the following observations are made:

- All sponsors committed to Tier 1 by the 6–month deadline.
- As part of their Tier 1 commitments, the sponsors for 5 of the 12 chemicals for which EPA has received a chemical assessment as of August 2006, provided a projected submission date for their Tier 1 chemical assessment. The chemical assessment for only one of the five chemicals (decabromodiphenyl ether) was received by EPA by the projected submission date.
- Some of the projected submission dates originally provided by the sponsors were subsequently revised at the request of the sponsor, or due to TERA scheduling of Peer Consultation meetings.
- EPA made all the chemical assessments available on the VCCEP website within 1 month of receipt.
- Although a recommended deadline for scheduling the Peer Consultation meetings was not specified in the December 2000 notice, the meetings for the 12 chemicals for which EPA has received a chemical assessment as of August 2006 were held within an average of 2.4 months of receiving the chemical assessment.
- Although a recommended deadline for TERA to issue its report summarizing a Peer Consultation meeting was not specified in the December 2000 notice, TERA issued its reports for the 12 chemicals for which EPA has received a chemical assessment as of August 2006, within an average of 4.1 months after each meeting.

The notice announcing VCCEP (Ref. 1, p. 81714) stated that EPA expected to evaluate the VCCEP pilot at 3 and 6 years after its initiation. EPA chose not to conduct an evaluation at 3 years because a sufficient number of chemicals had not gone through the public Peer Consultation process and, as a consequence of this, there was insufficient information to prepare a useful evaluation. Consequently, EPA decided to conduct a single evaluation at a point 5 years, approximately midway, into the program (i.e., 2006).

B. What is the Agency's Authority for Taking this Action?

Congress gave EPA the authority to implement TSCA for the purpose of protecting human health and the environment, in part, by requiring testing and, if necessary, by restricting the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances. VCCEP is a voluntary program which focuses on collecting information and developing data necessary to protect children from risks associated with chemical substances to which they are likely to be exposed. This notice seeks public involvement in a midpoint evaluation of how the VCCEP pilot is meeting its objectives and the overall objectives of VCCEP.

III. Request for Comment

EPA is requesting comment from stakeholders, interested parties, and the general public on the implementation of the VCCEP pilot, what modifications might be made to make the VCCEP pilot run more efficiently, and how well the VCCEP pilot is meeting the objectives of VCCEP. The main objectives of VCCEP are:

- To collect exposure, hazard, and risk information on chemicals to which children are likely to be exposed.
- To make the information available to the public so the public may better understand the potential health risks to children associated with certain chemical exposures.

The Agency is particularly interested in receiving your feedback with regard

to the list of questions in this Unit III. Commenters should not feel that they must confine their comments to the following specific questions, nor should they feel they must respond to any or all of the questions. Commenters, however, should attempt to provide comments on the aspects of the VCCEP pilot with which they have had experience and/or have formed a definite opinion. To be most helpful in the Agency's evaluation, please provide enough detail to explain or illustrate conclusions that you have reached based on your experiences.

- Have the hazard, exposure, and risk assessments submitted by the sponsors provided sufficient information to enable the Peer Consultation panel to adequately evaluate these aspects as they relate to children from the chemicals in question? Have the Data Needs Assessments prepared by the sponsors been fair and unbiased?
- Has the Peer Consultation process been open, transparent, timely, and useful as a forum for scientists and experts from various stakeholder groups to exchange views on sponsors' assessments and recommended data needs? How might it be improved?
- Has the Peer Consultation process been efficient? If not, what improvements could be made?
- Has the Peer Consultation panel adequately considered both toxicology and exposure information in developing its results?
- Does the Peer Consultation process provide a scientifically rigorous and effective means for eliciting comments and opinions from the assembled experts on the Peer Consultation panel and those attending the public meeting, and for assisting EPA in developing decisions?
- Have the communications related to the Peer Consultation process, activities and outcomes been effective and have they facilitated public understanding and use of the information generated from this process?
- Should the time allowed for sponsor commitment remain the same, i.e., 6 months to commit to Tier 1, and 4 months to commit to subsequent Tiers? (The commitment period is the time for the sponsor to decide whether to participate in VCCEP, form a consortium, and notify the Agency.)
- How can the timeliness of activities under the VCCEP pilot be improved? Should specific due dates be established for each step in the process? If so, how should a missed due date be addressed?
- Should the sponsor be requested to commit to more than one tier at a time? Is it better to run the VCCEP pilot with commitments at each tier, i.e., three commitments, or to run the VCCEP pilot with two commitments, i.e., to Tier 1 and to Tiers 2/3?
- Are there any ways in which EPA's contributions to the VCCEP pilot's evaluation and data needs decision process could be improved or made more effective?
- Has the VCCEP pilot made significant progress with respect to its objectives?
- The VCCEP pilot was designed to ensure that health effects, exposure, and risk information are made available to the public to enable a better understanding of the potential health risks to children associated with certain chemical exposures. Does the VCCEP website provide easy access to and adequate explanation of the information generated by the VCCEP pilot?

Commenters should follow the guidance provided in Unit I.B. and under **ADDRESSES** when preparing and submitting their comments.

IV. Comments Document

EPA will prepare a Comments Document summarizing the comments received in response to this notice and at a public meeting, if held. The Comments Document will identify any common themes and will assist EPA in determining what modifications might be made to make the program run more efficiently and/or better meet the objectives of VCCEP. Significant program modifications which the Agency is considering as a result of this evaluation will be discussed with stakeholders before implementing.

At this time, once the Comments Document is complete, EPA expects to make the Comments Document available to the public on the VCCEP website. The Comments Document will not be published in the **Federal Register**, nor will a notice of availability be published in the **Federal Register** announcing its appearance on the VCCEP website. However, if you provide your e-mail address, EPA will notify you by e-mail when the Comments Document is available on the VCCEP website at *http://www.epa.gov/chemrtk/vccep*.

V. Public Meeting

If there are requests to do so, EPA will hold a public meeting to discuss and take comment on the implementation of the VCCEP pilot. To request a public meeting, follow the directions under **ADDRESSES**.

VI. Materials in the Docket

An official docket was established for this VCCEP pilot evaluation under docket ID number EPA–HQ–OPPT–2006–0341. The docket includes information considered by EPA in developing this notice such as the documents specifically referenced in this action, any public comments received, and other information related to this action. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the public docket, regardless of whether these referenced documents are physically located in the public docket. For assistance in locating documents that are referenced in documents that EPA has placed in the public docket, but that are not physically located in the docket, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**. The public docket is available for review as specified under **ADDRESSES**.

1. EPA. Voluntary Children's Chemical Evaluation Program. **Federal Register** (65 FR 81700, December 26, 2000) (FRL–6758–5). Available on-line at: *http://www.epa.gov/chemrtk/vccep/pubs/ts00274d.pdf*.
2. EPA. Methodology for Selecting Chemicals for the Voluntary Children's Chemical Evaluation Program (VCCEP) Pilot. December 5, 2000. Available on-line at: *http://www.epa.gov/chemrtk/vccep/vccepmth.htm*.

List of Subjects

Environmental protection, Chemicals, Child health.

Dated: November 9, 2006.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E6–19574 Filed 11–17–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8243–7]

2007 Blue Ribbon Water Quality Trading Awards—Call for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initiation of an EPA recognition and leadership program for excellence in water quality trading, ''Blue Ribbon Water Quality Trading Awards,'' and solicits nominations for possible award to water quality trading programs and policies which have achieved or are expected to achieve environmental and economic benefits. Blue Ribbon Water Quality Trading Awards will encourage

and recognize exemplary water quality trading programs and policies. This recognition program will enable EPA to identify successful and innovative water quality trading programs and policies that most closely align with U.S. EPA's *Water Quality Trading Policy* and cooperate with those programs in order to prevent, reduce, and eliminate water pollution. This program will also help EPA promote water quality trading and create a network of water quality trading leaders throughout the country.

DATES: Nominations must be received by 5 p.m. Eastern Standard Time on Tuesday, January 16, 2007. Nominations received after this deadline will not be considered.

ADDRESSES: Blue Ribbon Water Quality Trading Awards; ATTN: Chris Lewicki; U.S. EPA; Office of Wetlands, Oceans and Watersheds; Assessment and Watershed Protection Division; Room 7303K; Mail Code 4503–T; 1301 Constitution Avenue, NW.; Washington, DC 20004; telephone 202–566–1293.

Nominations must be submitted by express mail, courier service, or hand delivery to the address in this section.

FOR FURTHER INFORMATION CONTACT: Chris Lewicki; U.S. EPA; Office of Wetlands, Oceans and Watersheds; Assessment and Watershed Protection Division; Room 7303K; Mail Code 4503–T; 1301 Constitution Avenue, NW.; Washington, DC 20004; telephone 202–566–1293; e-mail *lewicki.chris@epa.gov.* Additional information on water quality trading is available at: *http://www.epa.gov/waterqualitytrading.*

I. Background

Water quality trading is an innovative approach to achieve water quality goals more efficiently. Trading is based on the fact that sources in a watershed can face very different costs to control the same pollutant. Trading programs allow facilities facing higher pollutant control costs to meet their regulatory obligations by purchasing environmentally equivalent (or superior) pollutant reductions from another source at lower cost, thus achieving the same water quality improvement at lower overall cost. This recognition program will enable EPA to identify successful water quality trading programs and policies that most closely align with U.S. EPA's Water Quality Trading Policy and cooperate with those programs in order to prevent, reduce, and eliminate water pollution. This program will also help EPA promote water quality trading and create a network of water quality trading leaders throughout the country.

II. Award Information

From the nominations submitted to EPA's Blue Ribbon Water Quality Trading Awards, EPA will select those programs and policies that best meet the evaluation criteria described below. EPA will recognize those programs and policies that are selected as leaders in the field of water quality trading.

III. Eligible Applicants

Nominations for a Blue Ribbon Water Quality Trading Award must be for water quality trading programs or policies that have been, are being, or will be implemented in the United States, and may be either self-nominated or nominated by a third party. The following sectors are encouraged to apply: Corporations; industry; individuals; non-governmental organizations and other associations; institutions; and local, state, and tribal governments. In order to be considered for recognition, nominations must have a satisfactory compliance record with respect to environmental regulations and requirements.

IV. Evaluation Criteria

Recognition will be given based on the following evaluation criteria: (1) Actual or anticipated environmental improvement; (2) actual or anticipated economic benefits; (3) transparency of trades; (4) accountability of meeting National Pollutant Discharge Elimination System (NPDES) permit limits; (5) accounting for the fate and transport of the pollutant and the possible different forms of the pollutant being traded in the design of a pollutant credit; (6) mechanisms for managing uncertainty of non-point source pollutant credits (this criterion will apply only for those programs or policies that include trading with non-point sources of pollutants); (7) stakeholder involvement; and (8) actual or anticipated evaluation of the trading program or policy.

V. Selection Process

Nominations will be judged according to the evaluation criteria (see Section IV) by a panel of national water quality trading experts. The panelists will provide recommendations to EPA, who will then consider the expert panel's recommendations when making the final selections. In addition to the expert panel's recommendations, EPA may also consider additional factors in making its final selection such as diversity of programs and policies. EPA reserves the right to contact nominees for additional information should it be deemed necessary.

VI. Nomination Submission Information

A. Content of Nomination Package

Each nomination must include all the information listed below.

(1) Contact information: (a) Name of water quality trading program or policy being nominated; (b) Name of the organization(s) responsible for creating the water quality trading program or policy; (c) Name, telephone number, postal address, and e-mail of person to contact with questions regarding the nomination; and (2) A description of the water quality trading program or policy and how it addresses the evaluation criteria (see Section IV).

B. Form of Nomination Package

Nominations should not exceed 20 double-spaced pages in length of 12 point font (including all tables, timelines, charts, graphs, maps, pictures, and all other supporting materials). Nominations that exceed the 20 double-spaced page limit will not be considered. Send two printed hard-copies of the nomination and two compact discs (CDs) with the nomination in a Microsoft Word (.doc) format to the address as provided in the **ADDRESSES** section of this notice.

VII. Award Notice

EPA anticipates announcing its selections in the spring or summer of 2007. EPA will mail letters to all nominees and any third parties that made nominations indicating whether or not the water quality trading program or policy that was submitted for nomination was selected for recognition in EPA's 2007 Blue Ribbon Water Quality Trading Awards.

Dated: November 13, 2006.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E6–19556 Filed 11–17–06; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with section the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension without change

of the existing recordkeeping requirements under 29 CFR part 1602 et seq., Recordkeeping and Reporting Requirements under Title VII and the ADA. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before January 19, 2007.

ADDRESSES: Comments should be submitted to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel or Mona Papillon, General Attorney, at (202) 663–4660 or TDD (202) 663–4074. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 and Title I of the Americans with Disabilities Act, which prohibit discrimination on the basis of race, color, religion, sex, national origin or disability. Sections 709(c) of Title VII and section 107(a) of the ADA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602 et seq. Those regulations do not require the creation of any particular records but generally require employers to preserve any personnel and employment records they make or keep for a period of one year. The EEOC seeks extension of these regulations without change.

Overview of This Information Collection

Collection title: Recordkeeping under Title VII and the ADA.

OMB number: 3046–0040.

Description of affected public: Employers with 15 or more employees are subject to Title VII and the ADA.

Number of responses: 627,000.

Reporting hours: One.

Number of forms: None.

Federal cost: None.

Abstract: Section 709(c) of Title VII, 42 U.S.C. 2000e–8(c) and section 107(a) of the ADA, 42 U.S.C. 12117(a) require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination in employment requirements. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which are also incorporated by reference into the ADA at section 107(a).

Burden statement: The estimated number of respondents is approximately 627,000 employers. The recordkeeping requirement does not require reports or the creation of new documents; it merely requires retention of documents that the employer has made or kept. Thus, the burden imposed by these regulations is minimal. The burden is estimated to be less than one hour per employer.

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

For the Commission.

Dated: November 9, 2006.

Naomi Churchill Earp,

Chair.

[FR Doc. E6–19605 Filed 11–17–06; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection under review: ADEA waivers.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (Commission or EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension without change to existing collection requirements under 29 CFR 1625.22, Waivers of rights and claims under the Age Discrimination in Employment Act (ADEA). The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before January 19, 2007.

ADDRESSES: Comments should be submitted to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal

Counsel or Mona Papillon, General Attorney, Office of Legal Counsel, at (202) 663–4640 or TTY (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The EEOC enforces the ADEA of 1967, as amended, 29 U.S.C. 621 *et seq.*, which prohibits discrimination against employees and applicants for employment who are age 40 or older. Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Pub. L. 101–433, 104 Stat. 983(1990), to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA. The provisions of Title II of OWBPA require employers to provide certain information to employees (but not to EEOC) in writing when asking those employees to waive or release ADEA claims. The regulation at 29 CFR 1625.22 reiterates those requirements. The EEOC seeks extension without change of the information collection requirements contained in this record keeping regulation.

Overview of This Information Collection

Collection title: Disclosure requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR Part 1625.

OMB number: 3046–0042

Type of respondents: Business, state or local governments, not for profit institutions.

Description of affected public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, ''Exit Program'').

Number of responses: 13,713.

Reporting hours: 41,139.

Number of forms: None.

Federal cost: None.

Abstract: This requirement involves providing adequate information in waiver agreements offered to a group or class of persons in connection with an Exit Program, to satisfy the requirements of the OWBPA.

Burden statement: The only paperwork burden involved is the inclusion of the relevant data in waiver agreements under the OWBPA. The rule applies to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with an Exit Program.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

For the Commission.

Dated: November 9, 2006.

Naomi Churchill Earp,

Chair.

[FR Doc. E6–19606 Filed 11–17–06; 8:45 am]

BILLING CODE 6570–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Tuesday, December 5, 2006, from 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include a briefing of the Advisory Committee members on challenges for 2007, their roles and responsibilities and an ethics briefing.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Teri Stumpf to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) of other special accommodations, please contact, prior to November 29, 2006 Teri Stumpf, Room 1209, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: Teri Stumpf, Room 1209, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

Howard A. Schweitzer,

General Counsel.

[FR Doc. 06–9266 Filed 11–17–06; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that, at 2:29 p.m. on Wednesday, November 15, 2006, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director John C. Dugan (Comptroller of the Currency), seconded by Mr. Scott Polakoff, acting in the place and stead of Director John C. Reich (Office of Thrift Supervision), concurred in by Vice Chairman Martin J. Gruenberg, Director Thomas J. Curry, and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: November 15, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–9290 Filed 11–15–06; 4:49 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

DATE AND TIME: Tuesday, November 28, 2006 at 10 a.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.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–9328 Filed 11–16–06; 3:06 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 5, 2006.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Thurman Robert Mathews and Rose Marie Mathews; to acquire voting shares of Ohio State Bancshares, Inc., and thereby indirectly acquire voting shares of Ohio State Bank, all of Marion, Ohio.

Board of Governors of the Federal Reserve System, November 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–19552 Filed 11–17–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Marquette Financial Companies, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Commerce Bank, Corpus Christi, Texas. In addition, First Commerce bank will change its name to Meridian Bank Texas, and relocate its headquarters to Fort Worth, Texas.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. ONB Bancshares, Inc., Ozona, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The Ozona National Bank, Ozona, Texas.

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. 1867 Western Financial Corporation, Stockton, California; to acquire up to 9.9 percent of the voting shares of Pacific Business Bancorp, and thereby indirectly acquire voting shares of Pacific Business Bank, both of Irvine, California.

Board of Governors of the Federal Reserve System, November 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–19551 Filed 11–17–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology, American Health Information Community Quality Workgroup

ACTION: Announcement of meeting.

SUMMARY: This notice announces the third meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: December 13, 2006, from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (you will need a photo ID to enter a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality_main.html.*

SUPPLEMENTARY INFORMATION: During the meeting, the Workgroup will continue their discussion on a core set of quality measures and on the specific charge to the Workgroup. The Workgroup members will also participate in a facilitated process intended to envision and describe a world in which quality measurement and reporting are automated and clinical decision support is used to improve performance on

those quality measures. This shared vision will be used to inform the future work of the Workgroup.

The meeting will be available via internet access. For additional information, go to *http://www.hhs.gov/healthit/ahic/quality_instruct.html.*

Dated: November 7, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–9261 Filed 11–17–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry; The Board of Scientific Counselors (BSC); Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC and NCEH/ATSDR announce the following meetings of the aforementioned committee.

Time and Date: 8:30 a.m.–10 a.m., December 6, 2006.

Location: Hilton Atlanta Hotel, 255 Courtland Street, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The BSC will convene a plenary session at the 2006 National Environmental Public Health Conference. The session topic is ''Planning for the Present and Future''. The meeting will be held in a town hall forum. Registration may be required.

Time and Date: 1:30 p.m.—4:15 p.m., December 6, 2006.

Location: Hilton Atlanta Hotel, 255 Courtland Street, Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Supplementary Information: Beginning of full Board Meeting. See matters to be discussed below.

Time and Date: 9 a.m.–3 p.m., December 7, 2006.

Location: 1825 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC, and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC, and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters to be Discussed: Items will include but are not limited to discussion on the BSC's observations of the National Environmental Public Health Conference; Updates by the NCEH/ATSDR Office of the Director on appropriations; Fiscal Year 2006 accomplishments, challenges, and significant issues; updates on the Coordinating Center and its goals; presentation of the Program Peer Review Subcommittee report and discussion; presentation of the Health Department Subcommittee report and discussion; presentation of the Community and Tribal Subcommittee report and discussion; updates of the NCEH/ATSDR programs; updates on global health activities; review action items and confirm date for next meeting.

Agenda items are tentative and subject to change.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, Georgia 30303; telephone 404–498–0003, fax 404–498–0622; E-mail: *smalcom@cdc.gov.* The deadline for notification of attendance at all three meetings is November 30, 2006.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR.

Dated: November 14, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E6–19543 Filed 11–17–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry; The Health Department Subcommittee (HDS) of the Board of Scientific Counselors (BSC); Centers for Disease Control and Prevention (CDC); National Center for Environmental Health/Agency for Toxic Substances and Disease Registry(NCEH/ATSDR); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC, NCEH/ATSDR announces a meeting of the aforementioned subcommittee.

Time and Date: 5 p.m.–7 p.m. Eastern Standard Time, December 5, 2006.

Place: Hilton Atlanta Hotel, 255 Courtland Street, Atlanta, Georgia 30303.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the HDS will provide the BSC, NCEH/ATSDR with advice and recommendations on local and state health department issues and concerns that pertain to the mandates and mission of NCEH/ATSDR.

Matters To Be Discussed: A review of agenda and approval of November conference call minutes; discussion of workforce accomplishments; update on BSC presentation; discussion of external membership recommendations; discussion of BSC presentation; discussion of measures to improve NCEH/ATSDR interaction with local health departments; and next steps.

Agenda items are subject to change as priorities dictate.

Due to programmatic matters, this **Federal Register** Notice is being published on less than 15 calendar days notice to the public (41 CFR 102–3.150(b)).

Contact Person for More Information: Shirley D. Little, Committee Management Specialist, Office of Science, NCEH/ATSDR, 1600 Clifton Road, NE., M/S E–28, Atlanta, Georgia 30333, telephone 404–498–0615.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR.

Dated: November 14, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–19544 Filed 11–17–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Security and Bioterrorism Preparedness and Response Act Delegation of Authority

Notice is hereby given that I have delegated to the Director, Centers for Disease Control and Prevention (CDC), with authority to redelegate, the following authorities vested in the Secretary of Health and Human Services, under Title III of the Public Health Service (PHS) Act and the Public Health Security and Bioterrorism Preparedness and Response (PHSBPR) Act of 2002 (Pub. L. 107–188) as amended hereafter, insofar as these authorities pertain to the functions assigned to the CDC:

- PHS Act, Title III, Section 351A (42 U.S.C. 262a), excluding sections (i), (g)(3) and (g)(4) as provided in § 201 of the Act; and
- PHSBPR Act, Title II, Subtitle C, Section 221 (7 U.S.C. 8411).

This delegation excludes the authority to submit reports to the Congress, but should be exercised under the Department's existing delegation of authority and policy on regulations.

This delegation is effective upon signature. In addition, I hereby affirm and ratify any actions taken by you or your subordinates which involved the exercise of the authorities delegated herein prior to the effective day of the delegation.

Dated: November 8, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–9263 Filed 11–17–06; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an existing SOR, ''Record of Individuals Authorized Entry to the Health Care Financing Administration (HCFA) Building via a Card Key Access System (RICKS), System No. 09–70–3001'' last modified 66 FR 15264 (March 16, 2001). The name of the Agency has been changed from HCFA to the Centers for Medicare & Medicaid Services (CMS). We will modify the system name to read: ''Record of Individuals Authorized Entry to the CMS Building via a Card Key Access System (RICKS).'' We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the HCFA systems of records. The new assigned identifying number for this system should read: System No. 09–70–0518.

We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will delete routine use number 3 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system of records is to issue and control United States Government card keys to all CMS employees and other authorized individuals who require access into certain designated or secured areas. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant or grantee; (2) assist another Federal agency to conduct activities related to this system; and (3) support litigation involving the agency. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 13, 2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security

Boulevard, Baltimore, MD 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Marcia Levin, Security System Administrator, Emergency Resources Management and Response Group, Office of Operations Management, CMS, Room SLL–11–08, CMS, 7500 Security Boulevard, Baltimore, MD 21244–1850. Ms. Levin can be reached by telephone at 410–786–7840, or via e-mail at *Marcia.Levin@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for System

The authority for this system is given under the provisions of 5 United States Code (U.S.C.) 301, 40 U.S.C. 121, 41 Code of Federal Regulations (CFR) Part 102–74, Subpart C (Conduct on Federal Property), 5 U.S.C. 552a(e)(10), and Office of Management and Budget Circular A–123, ''Internal Control Systems.''

B. Collection and Maintenance of Data in the System

The system collects and maintains information on Federal employees, contractors and consultants, Government Services Administration (GSA) employees, and contract guards working in the central office complex in Baltimore. The information maintained contains the individual's name, assigned card key number, demographic and geographic information, and the building/secure area location. The system also contains the date and time of actual or attempted entry to secured areas.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release RICKS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of RICKS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to collect and maintain information to issue and control United States Government card keys to all CMS employees and other authorized individuals.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. That the purpose for which the disclosure is to be made is of sufficient importance to warrant the potential effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record; and

b. Remove or destroy at the earliest time all patient-identifiable information.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To assist another Federal agency to conduct activities related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with another Federal agency to assist in accomplishing CMS functions relating to purposes for this system of records.

The Federal Protection Service may require RICKS information if investigating a crime and/or in the administration of its assigned responsibilities.

3. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such

users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified or Altered System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: November 8, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0518

SYSTEM NAME:

''Record of Individuals Authorized Entry to CMS Building via a Card Key Access System (RICKS), HHS/CMS/OOM''.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and South Building, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system collects and maintains information on Federal employees, contractors and consultants, Government Services Administration (GSA) employees, and contract guards working in the central office complex in Baltimore.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information maintained contains the individual's name, assigned card key number, demographic and geographic information, and the building/secure area location. The system also contains the date and time of actual or attempted entry to secured areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for this system is given under the provisions of 5 United States Code (U.S.C.) 301, 40 U.S.C. 121, 41 Code of Federal Regulations (CFR) Part 102–74, Subpart C (Conduct on Federal Property), 5 U.S.C. 552a(e)(10), and Office of Management and Budget Circular A–123, ''Internal Control Systems.''

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to issue and control United States Government card keys to all CMS employees and other authorized individuals who require access into certain designated or secured areas. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant or grantee; (2) assist another Federal agency to conduct activities related to this system; and (3) support litigation involving the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.''

The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To assist another Federal agency to conduct activities related to this system of records and who need to have access to the records in order to perform the activity.

3. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on paper and magnetic disk.

RETRIEVABILITY:

Magnetic media records are retrieved by the name of the employees or other authorized individual and/or card key number. Paper records are retrieved alphabetically by name.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are retained for up to 3 years following expiration of an individual's authority to enter secured areas. When an individual is no longer authorized, information is deleted from magnetic media immediately.

SYSTEM MANAGER AND ADDRESS:

Director, Emergency Management and Response Group, Office of Operations Management, CMS, Room SLL–11–28, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, assigned card key number, and building/secure area, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORDS SOURCE CATEGORIES:

The data contained in this system of records are obtained from the individuals who submit a request for access to a secure building or area.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–19503 Filed 11–17–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act, we are proposing to modify or alter an existing SOR titled, ''Medicare-Cancer Registry Record System (MCR), System No. 09–70–0042,'' established at 53 FR 38082 (September 29, 1988), and most recently modified at 65 FR 37792 (June 16, 2000). We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the Health Care Financing Administration systems of records. The new assigned identifying number for this system should read: System No. 09–70–0509.

We propose to modify existing routine use number 2 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separately from CMS contractors and/or consultants. The modified routine use will be renumbered as routine use number 1. We will delete routine use number 3 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

We propose to broaden the scope of the disclosure provisions of this system by adding a routine use to permit the release of information to another Federal or state agency to contribute to the accuracy of CMS' proper payment of Medicare benefits, to enable such agency to administer a Federal health benefits program, and/or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, to evaluate and to monitor the amount and kinds of services received by Medicare beneficiaries contracting cancer. The added routine use will be numbered as routine use number 2.

We will further broaden the scope of this system by including the section titled ''Additional Circumstances Affecting Routine Use Disclosures,'' that addresses ''Protected Health Information (PHI)'' and ''small cell size.'' The requirement for compliance with HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' applies whenever the system collects or maintains PHI. This system may contain PHI. In addition, our policy to prohibit release if there is a possibility that an individual can be identified through ''small cell size'' will apply to the data disclosed from this system.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the

recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system of records is to link individual-level data from the Surveillance, Epidemiology, and End Results (SEER) tumor registry system, operated by the National Cancer Institute (NCI), with Medicare enrollment and claims data. This linked file will greatly enhance CMS's and NCI's ability to understand and evaluate the amount and kinds of services received by Medicare beneficiaries contracting cancer. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant or grantee; (2) assist another Federal or state agency to conduct activities related to this system; (3) support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects; and (4) support litigation involving the agency. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 9, 2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, MD 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Gerald Riley, Social Science Research Analyst, Division of Health Systems Research, Research and Evaluations Group, Office of Research, Development and Information, CMS, Mail Stop C3–20–11, 7500 Security Boulevard, Baltimore, MD 21244–1850. He can also be reached by telephone at 410–786–6699, or via e-mail at *gerald.riley@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for System

Authority for the collection and maintenance of this system is given under the provisions of section 1875(a) of the Social Security Act (42 U.S.C. 139511(a)) and sections 301 and 410–416 of the Public Health Service Act (42 U.S.C. 241 and 285–285a–5).

B. Collection and Maintenance of Data in the System

The system collects and maintains information on Medicare beneficiaries diagnosed with cancer in 12 geographic areas of the United States. Data is collected from 12 Surveillance, Epidemiology, and End Results (SEER) program cancer registries linked with Medicare enrollment and claims data. The areas covered by the 12 registries are Iowa, Utah, Hawaii, New Mexico, Connecticut, New Jersey, California, Louisiana, Kentucky, Atlanta, Detroit, and western Washington.

II. Agency Policies, Procedures, and Restrictions on Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MCR information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of MCR. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to understand and evaluate the amount and kinds of services received by Medicare beneficiaries contracting cancer.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. That the purpose for which the disclosure is to be made is of sufficient importance to warrant the potential effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record; and

b. Remove or destroy at the earliest time all patient-identifiable information.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so

would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To assist another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Evaluate and monitor the amount and kinds of services received by Medicare beneficiaries contracting cancer.

Other Federal or state agencies in their administration of a Federal health program may require MCR information in order to support evaluations and monitoring of services received and reimbursement for services provided.

3. To assist an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

The collected data will provide the research, evaluation and epidemiological projects a broader, longitudinal, national perspective of the data. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare patients and the policy that governs the care. CMS understands the concerns about the privacy and confidentiality of the release of data for a research use. Disclosure of data for research and evaluation purposes may involve aggregate data rather than individual-specific data.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with another Federal agency to assist in accomplishing CMS functions relating to purposes for this system of records.

4. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: November 8, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0509

SYSTEM NAME:

''Medicare-Cancer Registry Record System (MCR),'' HHS/CMS/ORDI.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and South Building, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system collects and maintains information on Medicare beneficiaries diagnosed with cancer in 12 geographic areas of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system collects and maintains data from 12 Surveillance, Epidemiology, and End Results (SEER) program cancer registries linked with Medicare enrollment and claims data. The areas covered by the 12 registries are Iowa, Utah, Hawaii, New Mexico, Connecticut, New Jersey, California, Louisiana, Kentucky, Atlanta, Detroit, and Western Washington State.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the collection and maintenance of this system is given under the provisions of section 1875(a) of the Social Security Act (42 United States Code (U.S.C.) 139511(a)) and sections 301 and 410–416 of the Public Health Service Act (42 U.S.C. 241 and 285–285a–5).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to link individual-level data from the Surveillance, Epidemiology, and End Results (SEER) tumor registry system, operated by the National Cancer Institute (NCI), with Medicare enrollment and claims data. This linked file will greatly enhance CMS's and NCI's ability to understand and evaluate the amount and kinds of services received by Medicare beneficiaries contracting cancer. Information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant or CMS grantee; (2) assist another Federal agency to conduct activities related to this system; (3) support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects; and (4) support litigation involving the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To assist another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds, and/or

c. Evaluate and monitor the amount and kinds of services received by Medicare beneficiaries contracting cancer.

3. To assist an individual or organization for research, evaluation or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

4. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government

Is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

B. *Additional Provisions Affecting Routine Use Disclosures.* To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on paper and magnetic disk.

RETRIEVABILITY:

Magnetic media records are retrieved by the name of the employees or other authorized individual and/or card key number. Paper records are retrieved alphabetically by name.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy.

These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E–Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers as long as needed for program research. Records will be disposed 3 years after research is completed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Health Systems Research, Research and Evaluations Group, Office of Research Development and Information.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, assigned card key number, and building/secure area, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Surveillance, Epidemiology, and End Results (SEER) program cancer registry records and Medicare enrollment and claims files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–19504 Filed 11–17–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to modify or alter an existing SOR, ''National Claims History (NCH),'' System No. 09–70–0005, last published at 67 FR 57015 (September 6, 2002). We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the Health Care Financing Administration systems of records. The new assigned identifying number for this system should read: System No. 09–70–0558.

We propose to modify existing routine use number one that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number one. We will broaden the scope of routine uses number 8 and 9, authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers to specific beneficiary/recipient practices that result in unnecessary cost to all Federally-funded health benefit programs.

We will delete routine use number six authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this modified system is to collect and maintain billing and utilization data on Medicare beneficiaries enrolled in hospital insurance (Part A) or medical insurance (Part B) of the Medicare program for statistical and research purposes related to evaluating and studying the operation and effectiveness of the Medicare program. The information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3)support providers and suppliers of services for administration of Title XVIII; (4) assist third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) assist QIOs; (6) process individual insurance claims by other insurers; (7) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (8) support litigation involving the agency; and (9) combat fraud, waste, and abuse in Federally-funded health benefits programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the modified or altered routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 14, 2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, MD 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.—3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: John Evangelist, Director, Division of Integrated Data Program Management, Enterprise Databases Group, Office of Information Services, CMS, Mail Stop N2–17–07, 7500 Security Boulevard, Baltimore, MD 21244–1850. He can also be reached by telephone at 410–786–2885, or via e-mail at *John.Evangelist@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under §§ 1874 (a) and 1875 of the Social Security Act (the Act) and Title 42 United States Code (U.S.C.) section 1395kk(a) and 1395ll.

B. Collection and Maintenance of Data in the System

NCH contains billing and utilization information on Medicare beneficiaries enrolled in hospital insurance (Part A) or medical insurance (Part B) of the Medicare program. Information maintained in this system includes, but is not limited to Medicare billing and utilization data, name, health insurance claim number, ethnicity, gender, date of birth, state and county code, zip code, as well as the basis for the beneficiary's Medicare entitlement. The system also contains provider characteristics, assigned provider number (facility, referring/servicing physician), admission date, service dates, diagnosis and procedural codes, total charges, Medicare payment amount, and beneficiary's liability.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release NCH information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of NCH. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to collect and maintain billing and utilization data on Medicare beneficiaries enrolled in hospital insurance (Part A) or medical insurance (Part B) of the Medicare program for statistical and research purposes related to evaluating and studying the operation and effectiveness of the Medicare program.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing this information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor, consultant or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require NCH information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Internal Revenue Service may require NCH data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

In addition, state agencies in their administration of a Federal health program may require NCH information for the purpose of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

The Railroad Retirement Board requires NCH information to enable them to assist in the implementation and maintenance of the Medicare program. The Social Security Administration requires NCH data to enable them to assist in the implementation and maintenance of the Medicare program.

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with HHS for determining Medicaid and Medicaid eligibility, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, XVIII, and XIX of the Act, and for the administration of the Medicaid program. Data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require NCH information for auditing state Medicaid eligibility considerations. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this system.

3. To support providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require NCH information in order to establish the validity of evidence or to verify the accuracy of information presented by the individual, as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

4. To assist third party contact in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and;

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third parties contacts require NCH information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

5. To support Quality Improvement Organizations (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care.

The QIO will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The QIO will assist state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To assist insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, other groups providing protection against medical expenses of their enrollees without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting: (a) An individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer (MSP) provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers may require NCH information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The NCH data will provide for research or in support of evaluation projects, a broader, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

9. To assist a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

10. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require NCH information for the purpose of combating fraud, waste, and abuse in such federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: November 8, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0558

SYSTEM NAME:

''National Claims History (NCH),'' HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, MD 21244–1850 and at various contractor sites and at CMS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCH contains billing and utilization information on Medicare beneficiaries enrolled in hospital insurance (Part A) or medical insurance (Part B) of the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information maintained in this system includes, but is not limited to Medicare billing and utilization data, name, health insurance claim number, ethnicity, gender, date of birth, state and county code, zip code, as well as the basis for the beneficiary's Medicare entitlement. The system also contains provider characteristics, assigned provider number (facility, referring/servicing physician), admission date, service dates, diagnosis and procedural codes, total charges, Medicare payment amount, and beneficiary's liability.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under §§ 1874(a) and 1875 of the Social Security Act (the Act) and Title 42 United States Code (U.S.C.) section 1395kk(a) and 1395ll.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this modified system is to collect and maintain billing and utilization data on Medicare beneficiaries enrolled in hospital insurance (Part A) or medical insurance (Part B) of the Medicare program for statistical and research purposes related to evaluating and studying the operation and effectiveness of the Medicare program. The information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) support providers and suppliers of services for administration of Title XVIII; (4) assist third parties where the contact is expected to have information relating to the individual's capacity to manage his or her own affairs; (5) assist QIOs; (6) process individual insurance claims by other insurers; (7) facilitate research on the quality and effectiveness of care provided, as well as payment-related projects; (8) support litigation involving the agency; and (9) combat fraud, waste, and abuse in federally-funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or grantees who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To support providers and suppliers of services directly or through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

4. To assist third party contact in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and;

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, and in cases in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

5. To support Quality Improvement Organizations (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care.

6. To facilitate insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, other groups providing protection against medical expenses of their enrollees without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting: (a) An individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer (MSP) provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

9. To assist a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

10. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. *Additional Provisions Affecting Routine Use Disclosures.* To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on both magnetic storage media and in a DB2 relational database management environment (DASD data storage media).

RETRIEVABILITY:

Information in this system is retrieved by HICN, provider number (facility, physician, supplier Ids), service dates, type of bill, Medicare status code, diagnosis, procedural codes, and beneficiary state code.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

Records will be retained and disposed of in accordance with the National Archives and Records Administration guidelines. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Integrated Data Program Management, Enterprise Databases Group, Office of Information Services, CMS, Mail Stop N2–17–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of notification, the subject individual should write to the system manager who will require the system name, and the retrieval selection criteria (e.g., HIC, facility ID, physician/supplier number, service dates, type of bill, etc.).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORDS SOURCE CATEGORIES:

Fee-for-Service (FFS) billing and utilization information contained in this records system is obtained from the Common Working File.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–19505 Filed 11–17–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to modify or alter an existing SOR, ''Inpatient Rehabilitation Facilities (IRF) Patient Assessment Instrument (IRF–PAI),'' System No. 09–70–1518, last published at 66 **Federal Register** 56681 (November 9, 2001). Information maintained in this system will continue to contain clinical assessment information for all Medicare Part A fee-for-service patients receiving the services of a Medicare approved IRF. This information will be useful in developing core measures that provide meaningful information on patient characteristics and outcomes across post-acute care settings and will be used by CMS to fulfill its responsibility for validating surveys conducted by accrediting agencies. We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center that maintained information in the Health Care Financing Administration systems of records. The new assigned identifying number for this system should read: System No. 09–70–0521.

We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will modify existing routine use number 2 that permits disclosure to Peer Review Organizations (PRO). Organizations previously referred to as PROs will be renamed to read: Quality Improvement Organizations (QIO). Information will be disclosed to QIOs relating to assessing and improving IRF quality of care. The modified routine use will be renumbered as routine use number 4.

We will delete routine use number 5 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject. We will broaden the scope of published routine uses number 7 and 8, authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers increasingly more to specific beneficiary or recipient practices that result in unnecessary cost to federally-funded health benefit programs.

CMS proposes to broaden the scope of the disclosure requirement for routine use number 5, authorizing disclosure to national accrediting organizations that have been approved by CMS for deeming authority for Medicare requirements for home health services. Information will be released to these organizations for only those facilities that they accredit and that participate in the Medicare program and if they meet the following requirements: (1) Provide identifying information for IRFs that have an accreditation status with the requesting accrediting organization that has been granted deeming authority by CMS, (2) submission of a finder file identifying beneficiaries/patients receiving IRF services, (3) safeguard the confidentiality of the data and prevent unauthorized access, and (4) upon completion of a signed data exchange agreement or a CMS data use agreement.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this modified system is to support the IRF prospective payment system (PPS) for payment of the IRF Medicare Part A fee-for-services furnished by the IRF to Medicare beneficiaries. Information maintained in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant, or a CMS grantee; (2) assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, for evaluating and monitoring the quality of IRF health care and contribute to the accuracy of health insurance operations; (3) support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects; (4) support the functions of Quality Improvement Organizations; (5) assist other insurers; (6) support the functions of national accrediting organizations; (7) support litigation involving the Agency; and (8) combat fraud, waste, and abuse in certain health care programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the modified or altered routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

DATES: *Effective Dates:* CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 14, 2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Georgia Johnson, Division of Continuing Care Providers, Survey and Certification Group, Center for Medicaid and State Operations, CMS, Mail Stop S2–12–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. She can also be reached by telephone at 410–786–6859,

or via e-mail at *Georgia.Johnson@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under section 1886 (j) (2) (D) of the Social Security Act authorizing the secretary to collect the data necessary to establish and administer the payment system.

B. Collection and Maintenance of Data in the System

The IRF–PAI will be completed on all Medicare Part A fee-for-service patients who receive services under Part A from an IRF, it may also be completed on Medicare Advantage enrollees. Records in this system will include, but are not limited to, name, address, date of birth, gender, ethnicity, social security number, health insurance claim number, Medicaid number, patient identification number, patient history, diagnosis, and functional prognosis.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release IRF–PAI information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of IRF–PAI. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g, to support the IRF prospective payment system (PPS) for payment of the IRF Medicare Part A fee-for-services furnished by the IRF to Medicare beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in The System

A. The Privacy Act allows us to disclose information without an indivdual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Improve the state survey process for investigation of complaints related to health and safety or quality of care and to implement a more outcome oriented survey and certification program.

Other Federal or state agencies in their administration of a Federal health program may require IRF–PAI information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To an individual or organization for research on the utilization of inpatient rehabilitation services as well as evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for understanding and improving payment projects.

The IRF–PAI data will provide for research or in support of evaluation projects, a broader, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

The QIO may use this data to support quality improvement activities and other QIO responsibilities as detailed in Title XI §§ 1151–1164.

The QIO will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The QIO will

assist state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

5. To assist insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organization (HMO) or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care payment plan (HCPP), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a third party administrator;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, CMP, HMO and HCPP may require IRF–PAI information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper payment for services provided.

6. To assist national accrediting organization(s) whose accredited facilities are presumed to meet certain Medicare requirements for inpatient hospital rehabilitation services (e.g., the Joint Commission for the Accreditation of Healthcare Organizations, the American Osteopathic Association, or the Commission on Accreditation of Rehabilitation Facilities). Information will be released to these organizations for only those facilities that they accredit and that participate in the Medicare program and if they meet the following requirements:

a. Provide identifying information for IRFs that have an accreditation status with the requesting deemed organization;

b. Submission of a finder file identifying beneficiaries/patients receiving IRF services;

c. Safeguard the confidentiality of the data and prevent unauthorized access; and

d. Upon completion of a signed data exchange agreement or a CMS data use agreement.

At this time, CMS anticipates providing accrediting organizations with IRF–PAI information to enable them to target potential identified problems during the organization's accreditation review process of the facility.

7. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

8. To assist a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

9. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require IRF–PAI information for the purpose of combating fraud, waste, and abuse in such federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and

information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent NIST publications; the DHHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: November 8, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0521

SYSTEM NAME:

''Inpatient Rehabilitation Facilities Patient Assessment Instrument (IRF–PAI),'' HHS/CMS/CMSO.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor sites and at CMS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The IRF–PAI will be completed on all Medicare Part A fee-for-service patients who receive services under Part A from an IRF, it may also be completed on Medicare Advantage enrollees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system will include, but are not limited to, name, address, date of birth, gender, ethnicity, social security number (SSN), health insurance claim number (HICN), Medicaid number, patient identification number, patient history, diagnosis, and functional prognosis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under section 1886(j)(2)(D) of the Social Security Act authorizing the secretary to collect the data necessary to establish and administer the payment system.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this modified system is to support the IRF prospective payment system (PPS) for payment of the IRF Medicare Part A fee-for-services furnished by the IRF to Medicare beneficiaries. Information maintained in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor, consultant, or a CMS grantee; (2) assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, for evaluating and monitoring the quality of IRF health care and contribute to the accuracy of health insurance operations; (3) support research, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects; (4) support the functions of Quality Improvement Organizations (QIO); (5) assist other insurers; (6) support the functions of national accrediting organizations; (7) support litigation involving the Agency; (8) combat fraud, waste, and abuse in certain health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Improve the state survey process for investigation of complaints related to health and safety or quality of care and to implement a more outcome oriented survey and certification program.

3. To an individual or organization for research on the utilization of inpatient rehabilitation services as well as evaluation or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or for understanding and improving payment projects.

4. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

5. To assist insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organization (HMO) or a competitive medical plan (CMP)) with a Medicare

contract, or a Medicare-approved health care payment plan (HCPP), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a third party administrator;

b. Utilize the information solely for the purpose of processing the individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

6. To assist national accrediting organization(s) whose accredited facilities are presumed to meet certain Medicare requirements for inpatient hospital rehabilitation services (e.g., the Joint Commission for the Accreditation of Healthcare Organizations, the American Osteopathic Association, or the Commission on Accreditation of Rehabilitation Facilities). Information will be released to these organizations for only those facilities that they accredit and that participate in the Medicare program and if they meet the following requirements:

a. Provide identifying information for IRFs that have an accreditation status with the requesting deemed organization;

b. Submission of a finder file identifying beneficiaries/patients receiving IRF services;

c. Safeguard the confidentiality of the data and prevent unauthorized access; and

d. Upon completion of a signed data exchange agreement or a CMS data use agreement.

7. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

8. To assist a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

9. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. *Additional Provisions Affecting Routine Use Disclosures.* To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00), disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

The Medicare records are retrieved by the HICN and SSN.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the DHHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain identifiable IRF–PAI data for a total period of 15 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Survey and Certification Group, Center for Medicaid and State Operations, CMS, Mail Stop C3–20–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, address, date of birth, and gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it

may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Information for this system is collected from the Inpatient Rehabilitation Facilities—Patient Assessment Instrument.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–19506 Filed 11–17–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), with authority to re-delegate, the authority vested in the Secretary of Health and Human Services under Title III, Part B, Section 319F–4, titled ''Covered Countermeasure Process,'' of the Public Health Service Act, as amended, by the Public Readiness and Emergency Preparedness Act of 2006 (Pub. L. 109–148), only insofar as it pertains to the compensation program.

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations.

This delegation is effective upon signature. In addition, I hereby affirmed and ratified any actions taken by the HRSA Administrator or other HRSA officials which involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: November 8, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–9264 Filed 11–17–06; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute: Circulating Biomarkers of Cardiovascular Risk in the NHLBI's Framingham Heart Study

AGENCY: National Heart, Lung, and Blood Institute, NIH, HHS.

ACTION: Notice.

SUMMARY: National Heart, Lung, and Blood Institute (NHLBI) seeks partners in a biomarker consortium to promote research on novel serum/plasma/urine biomarkers of cardiovascular disease (CVD) and related risk factors including atherosclerosis, obesity, insulin resistance, hypertension, and metabolic syndrome. An immediate consequence of this project will be the development of new diagnostic tests to identify individuals at high risk for CVD and its risk factors at a time when intervention is most feasible. A downstream result of the identification of novel biomarkers of CVD (and its risk factors) will be the discovery of disease promoting pathways, which may serve as new therapeutic targets for treating and preventing our nation's leading cause of death.

Background: Despite steady declines in CVD mortality, CVD remains the leading cause of death in the developed world. The NHLBI's Framingham Heart Study (FHS) has been instrumental in the identification and elucidation of key modifiable risk factors for CVD, which in turn have facilitated modern approaches to the prevention and treatment of CVD. Because of its prospective study design, the NHLBI's FHS is ideally positioned to enable identification of novel risk factors for CVD. The availability of frozen serum/plasma/urine samples from over 7000 FHS participants in the Offspring and Third Generation cohorts, in concert with new high-throughput quantitative biomarker technology available from commercial collaborators, provides a unique opportunity to explore the biochemical signatures of key CVD phenotypes. In addition, by the end of 2007 genotyping of 550k SNPs will be completed in nearly all the FHS participants as part of the NHLBI's SHARe project and these data will permit analysis of the associations of gene variants with biomarker levels.

Scientific Scope: The proposed study will measure 150 or more evolving and novel biomarkers from the FHS in 7000 FHS subjects for whom subclinical and clinical CVD and its risk factors have been carefully characterized. Analyses will be conducted for association of biomarkers—individually and collectively—with clinically relevant phenotypes.

The aims of the project are to:

1. Identify the biochemical signature of atherosclerosis as determined by: (a) Aortic and coronary calcification on CT (data available in 3500 people), (b) aortic plaque burden by MRI (n=2000), (c) carotid intimal-medial thickness by ultrasound (n=3500), (d) clinical atherosclerotic CVD (n=500), and (e) the dynamic balance between arterial calcification and bone demineralization (n=3500).

2. Identify the biochemical signature of metabolic syndrome components including (a) systolic and diastolic blood pressure (n=7000), (b) obesity (n=7000) and visceral adiposity by CT (n=3500), (c) dyslipidemia (n=7000), and (d) impaired fasting glucose, diabetes, and insulin resistance.

Biomarkers for this project will be selected by expert consensus on the basis of (a) a careful review of the literature for biomarkers of atherosclerosis and metabolic syndrome, and (b) genes implicated in atherosclerosis and metabolic syndrome (and their constituent components and pathways), or showing evidence of association with the phenotypes of interest.

Technology: As part of this project, new quantitative tests will be developed to measure circulating biomarker levels using antibody sandwich assays and/or proteomic approaches that are amenable to high throughput application. Critical to this project is the implementation of methods to measure large numbers of biomarkers with minimal sample volume; proteomic, bead-linked immunoassays, and nanotechnology methods may be necessary to accomplish this aim. Pathways to be studied include but are not limited to: Adhesion/chemoattraction, adipokines, cytokines, growth factors, heat shock proteins, inflammation, lipoproteins, neurohormones, thrombosis/fibrinolysis, and vascular calcification. Demonstrated rigorous assay validation using non-FHS samples will be necessary before FHS biospecimens can be used for this project.

Study Sample: The NHLBI's FHS is community-based[N1], which should contribute to the generalizability of

study results. Frozen serum/plasma/urine samples and buffy coats for WBC derived RNA are available in two carefully characterized cohorts comprising over 7000 individuals. The presence of young, middle-aged, and elderly subjects will allow a more complete exploration of biomarkers for relevant traits across a wide age range (20–90 years). The FHS main contracts (N01–HC–38038; N01–HC–25195) have provided for the core examinations of the participants that include physical examination, ECG, multidetector CT scans for coronary calcification and visceral adiposity, and blood specimen collection. In addition, buffy coats and purified white blood cell RNA also are available for WBC-derived RNA expression profiling to complement circulating biomarker and genotypic characterization.

ADDRESSES: Interest regarding this notice should be forwarded to: Ms. Lili Portilla, NHLBI Office of Technology Transfer and Development, 6705 Rockledge Drive, Suite 6018 MSC 7992, Bethesda, MD 20892–7992 (E-mail: *PortillL@nhlbi.nih.gov*). Scientific inquiries should be submitted to Daniel Levy, M.D., FACC, Director, Framingham Heart Study, Center for Population Studies, National Heart, Lung, & Blood Institute, 73 Mt. Wayte Avenue, Suite 2, Framingham, MA 01702 (E-mail: *LevyD@nih.gov*).

DATES: *Effective Dates:* Inquiries regarding this Notice and scientific matters may be forwarded at any time. Confidential, written letters of interest, preferably two pages or less, must be submitted to NHLBI on or before January 19, 2007. Guidelines on next steps will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

Dated: November 3, 2006.

Suzanne Freeman,

NHLBI Project Clearance Liaison, National Institutes of Health.

Dated: November 3, 2006.

Daniel Levy,

Director of the NHLBI Framingham Heart Study, National Institutes of Health.

[FR Doc. E6–19522 Filed 11–17–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Visa Waiver Program Carrier Agreement (Form I–775)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Visa Waiver Program Carrier Agreement (Form I–775). 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 January 19, 2007, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, *Attn.*: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., 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: (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 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 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: Visa Waiver Program Carrier Agreement.

OMB Number: 1651–0110.

Form Number: Form–I–775.

Abstract: The Form I–775 provides for certain aliens to be exempt from the non-immigrant visa requirements if seeking entry as a visitor for no more than 90 days, provided that no potential threat exists to the security of the United States.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 800.

Estimated Total Annualized Cost on the Public: N/A.

Dated: November 14, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6–19596 Filed 11–17–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Dec. 06–35]

Re-Accreditation and Re-Approval of Inspectorate America Corporation as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Inspectorate America Corporation of Aston, Pennsylvania, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Inspectorate America Corporation, 507 Duttons Mill Road, Suite A–1, Aston, Pennsylvania 19014, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13.

DATES: The re-approval of Inspectorate America Corporation as a commercial gauger and laboratory became effective on June 13, 2006. The next triennial inspection date will be scheduled for June 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 13, 2006.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E6–19591 Filed 11–17–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Annual User Fee for Customs Broker Permit and National Permit: General Notice

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of Due Date for Customs Broker User Fee.

SUMMARY: This is to advise Customs brokers that the annual fee of $125 that is assessed for each permit held by a broker whether it may be an individual, partnership, association or corporation, is due by January 19, 2007. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for payment of fee: January 19, 2007.

FOR FURTHER INFORMATION CONTACT: Bruce Raine, Broker Management Branch, (202) 344–2702.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the General Notice published in the **Federal Register**, Volume 60, No. 187, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 2007, the due date of the user fee is January 19, 2007. It is expected that the annual user fees for brokers for subsequent years will be due on or about the 20th of January of each year.

Dated: November 9, 2006

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. E6–19588 Filed 11–17–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: National Flood Insurance Claims Appeals Process.

OMB Number: 1660–0095.

Abstract: This information collection implements the mandates of section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 to establish an appeal process for National Flood Insurance Program policyholders in cases of unsatisfactory decisions on claims, proofs of loss, and loss estimates made by any insurance company, agent, adjuster, or FEMA employee or contractor.

Affected Public: Individuals or households and Business or other for profit.

Number of Respondents: 2,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4,000.

Frequency of Response: One-time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before December 20, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: November 13, 2006.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–19529 Filed 11–17–06; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–85]

Notice of Submission of Proposed Information Collection to OMB; Utility Allowance Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

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. The Department is soliciting public comments on the subject proposal.

Multifamily project owners are required to advise the Secretary of the need for and request approval of a new utility allowance for tenants.

DATES: *Comments Due Date:* December 20, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0352) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Utility Allowance Adjustments.

OMB Approval Number: 2502–0352.

Form Numbers: None.

Description of the need for the information and its proposed use:

Multifamily project owners are required to advise the Secretary of the need for and request approval of a new utility allowance for tenants.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	4,824	1		0.5		2,412

Total Estimated Burden Hours: 2,412.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 13, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–19497 Filed 11–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–KC-P; F–14895–A and F–14895–A2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NIMA Corporation. The lands are in the vicinity of Dall Lake and on Nunivak Island, Alaska, and are located in:

Seward Meridian, Alaska

T. 1 N., R. 83 W.,
Secs. 2, 12 and 13.
Containing approximately 1,128 acres.

T. 3 N., R. 97 W.,
Sec. 6.
Containing approximately 0.32 acres.

T. 3 N., R. 98 W.,
Sec. 22.
Containing 640 acres.

T. 3 N., R. 99 W.,
Secs. 3, 4 and 5;
Secs. 7 to 10, inclusive;
Secs. 15 to 19, inclusive;
Secs. 23, 24 and 30.
Containing approximately 6,831 acres.

T. 4 N., R. 99 W.,
Sec. 33.
Containing 29.28 acres.
Total aggregate approximately 8,691 acres.

A portion of the subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to NIMA Corporation. The remaining lands lie within Nunivak Island National Wildlife Refuge, established April 15, 1929. The subsurface estate in the refuge lands will be reserved to the United States at the time of conveyance. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 20, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Renee Fencl,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–19550 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV912–07–1990–PO–241A–006F]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting Locations and Times for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), two meetings of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion at the meetings will include, but are not limited to: manager's reports of field office activities; RAC subcommittee reports; Southern Nevada Public Land Management Act-Round 7 Nominations; Pine Nut Mountain RMP Amendment/DEIS; Winnemucca RMP/DEIS; Alpine County RMP Amendment; Sand Mountain Conservation Strategy; Coer-Rochester Mine Plan/DEIS; Aqua Trac Water Export Project; Echo Canyon Cement Plant Plan; renewable energy projects review; grazing allotment review; and additional topics the council may raise during the meetings.

Dates & Times: The RAC will meet on Wednesday-Thursday, February 7–8, 2007, at the BLM-Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada; and on Wednesday-Thursday, July 11–12, 2007, at the BLM-Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada. All meetings are open to the public. A general public comment period, where the public may submit oral or written comments to the RAC, will be held on the first day of each two-day meeting at 4 p.m. (February 7 & July 11).

Final agendas, with any additions/corrections to agenda topics, the starting and ending times of each meeting, and details of any planned field trips, will be determined/posted at least two weeks before each two-day meeting on the BLM-Nevada State Office Web site at *http://www.nv.blm.gov/rac;* hard copies of the agendas can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or those who wish a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107, no later than two weeks before each two-day meeting.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov.*

Dated: November 14, 2006.

Don Hicks,

Field Office Manager, BLM–Carson City Field Office.

[FR Doc. E6–19549 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–100–1430–ES; U–82096]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease or conveyance to the City of Washington under the provisions of the Recreation and Public Purposes Act (R&PP), as amended, 15 acres of public land located in Washington County, Utah. The City of Washington proposes to the use the land for a wareyard to accomodate office and storage space for City departments.

ADDRESSES: Bureau of Land Management, St. George Field Office, 345 E. Riverside Drive, St. George, Utah 84790.

DATES: Interested persons may submit written comments to the BLM at the address stated below. Comments must be received by not later than January 4, 2007.

FOR FUTHER INFORMATION CONTACT: Kathy Abbott, BLM Realty Specialist, at the address above or at (435) 688–3234.

SUPPLEMENTARY INFORMATION: The following described public land in Washington County, Utah has been examined and found suitable for classification for lease or conveyance for a municipal wareyard under provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*), and is hereby classified accordingly:

Salt Lake Meridian

T. 42 S., R. 15 W.,
sec. 24, portions of S½NW¼SE¼SW¼, S½SE¼SW¼.

The area described contains 15 acres in Washington County.

The City of Washington has filed with BLM an application pursuant to the R&PP Act, as amended. The City of Washington proposes to the use the land for a wareyard to accommodate office and storage space for City departments based on a plan submitted with the application. The public land is not required for any Federal purpose.

Lease/conveyance is consistent with current BLM planning for this area and would be in the public interest. The lease/conveyance, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
3. All minerals are reserved to the United States, together with the right to prospect for, mine, and remove the minerals, under applicable laws and regulations established by the Secretary of the Interior.
4. All valid existing rights.
5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein. Detailed information concerning the proposed lease or conveyance, including environmental records, is available at the BLM St. George Field Office at the address above.

On November 20, 2006, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

Interested persons may submit comments regarding the proposed classification or lease/conveyance of the land to the Field Office Manager, BLM St. George Field Office at the address above. Comments must be received by not later than January 4, 2007.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for a City wareyard. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether

the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the City of Washington's application, whether the BLM followed proper administrative procedures in processing the application and in reaching the proposed decision, or any other factor not directly related to the suitability of the land for City wareyard purposes.

All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words ''CONFIDENTIALITY REQUEST'' in uppercase letters in order for BLM to comply with your request. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the decision to lease or convey will become the final decision of the Department of the Interior. In the absence of any adverse comments, the classification will become effective on January 19, 2007. The land will not be offered for lease/conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Dated: July 18, 2006.

Kim Leany,

Acting Field Office Manager.

Editorial Note: This document was received at the Office of the Federal Register on November 14, 2006.

[FR Doc. E6–19507 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST; Group No. 17, North Carolina]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; North Carolina.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

District Number 9, Graham County, North Carolina

Tract Number 88 and a portion of Tract Number 87.

The plat of survey represents the dependent resurvey of Tract Number 88 and a portion of Tract Number 87, and was accepted November 1, 2006. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: November 1, 2006.

Joseph W. Beaudin,

Acting Chief Cadastral Surveyor.

[FR Doc. E6–19567 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of an information collection (1010–0091).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 254, ''Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 20, 2006.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with (1010–0091).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Use Information Collection Number 1010–0091, in the subject line.
- *Fax:* 703–787–1093. Identify with Information Collection Number 1010–0091.
- 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 ''Information Collection 1010–0091'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the ICR and the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 254, ''Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.''

OMB Control Number: 1010–0091.

Abstract: The Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. This authority and responsibility are among those delegated to the Minerals Management Service (MMS) by Executive Order 12777. Regulations at 30 CFR part 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

The MMS uses the information collected under 30 CFR 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

• Determine effectiveness of the spill-response capability of owners/operators.

• Review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements to ensure that they meet minimum requirements of OPA.

• Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to witness spill-response exercises.

• Assess the sufficiency and availability of contractor equipment and materials.

• Verify that sufficient quantities of equipment are available and in working order.

• Oversee spill-response efforts and maintain official records of pollution events.

• Assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

No proprietary, confidential, or sensitive information is collected. However, we will protect any information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. Responses are mandatory.

Frequency: On occasion, monthly, annually, biennially, and triennially.

Estimated Number and Description of Respondents: Approximately 197 owners or operators of facilities located in both State and Federal waters seaward of the coast line.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 35,070 hours. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 254	Reporting requirement	Hour burden	Average number of annual responses	Annual burden hours
254.1(a) thru (d); 254.2(a); 254.3 thru 254.5; 254.7; 254.20 thru 254.29; 254.44(b).	Submit spill response plan for OCS facilities and related documents.	120	26 new plans	3,120
254.1(e)	Request MMS jurisdiction over facility landward of coast line (no recent request received).	0.5	2 requests	1
254.2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such.	15	1 certification	15
254.2(c); 254.30	Submit revised spill response plan for OCS facilities at least every 2 years; notify MMS of no change.	36 1	177 revised plans 1 No change	6,372 1
254.2(c)	Request deadline extension for submission of revised plan.	4	11	44
254.8	Appeal MMS orders or decisions	Exempt under 5 CFR 1320.4(a)(2), (c)		0
254.40	Make records of all OSRO-provided services, equipment, personnel available to MMS.	5	20	100
254.41	Conduct annual training; retain training records for 2 years.	25	197 owners/operators	4,925
254.42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years.	110	134 exercises	14,740
254.42(f)	Inform MMS of the date of any exercise (triennial).	1	170 notifications	170
254.43	Inspect response equipment monthly; retain inspection & maintenance records for 2 years.	3.5	55 inspections × 12 months = 660	2,310
254.46(a)	Notify NRC of all oil spills from owner/operator facility.	Burden would be included in the NRC inventory		0
254.46(b)	Notify MMS of oil spills of one barrel or more from owner/operator facility; submit follow-up report.	2	61 notifications & reports	122
254.46(c)	Notify MMS & responsible party of oil spills from operations at another facility.	2	24 notifications	48
254.50; 254.51	Submit response plan for facility in State waters by modifying existing OCS plan.	42	10 plans	420
254.50; 254.52	Submit response plan for facility in State waters following format for OCS plan.	100	9 plans	900
254.50; 254.53	Submit response plan for facility in State waters developed under State requirements.	89	18 plans	1,602
254.54	Submit description of oil-spill prevention procedures.	5	36 submissions	180
Total Hour Burden			1,557	35,070

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice* * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 10, 2006, we published a **Federal Register** notice (71 FR 18113) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, 30 CFR 254.9 displays the OMB control number, specifies that the public may comment at anytime on the collection of information required in the 30 CFR 254 regulations, and provides the address to which they should send comments. We have received no comments in response to those efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 20, 2006.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. There may be circumstances in which we 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. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: October 16, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E6–19513 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of an information collection (1010–0071).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 203, ''Relief or Reduction in Royalty Rates.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 20, 2006.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with (1010–0071).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Use Information Collection Number 1010–0071 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0071.
- 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 ''Information Collection 1010–0071'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team, (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the ICR and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 203, ''Relief or Reduction in Royalty Rates.''

OMB Control Number: 1010–0071.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended by Public Law 104–58, Deep Water Royalty Relief Act (DWRRA), gives the Secretary of the Interior (Secretary) the authority to reduce or eliminate royalty or any net profit share specified in OCS oil and gas leases to promote increased production. The DWRRA also authorized the Secretary to suspend royalties when necessary to promote development or recovery of marginal resources on producing or non-producing leases in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude.

Section 302 of the DWRRA provides that new production from a lease in existence on November 28, 1995, in a water depth of at least 200 meters, and in the GOM west of 87 degrees, 30 minutes West longitude qualifies for royalty suspension in certain situations. To grant a royalty suspension, the Secretary must determine that the new production or development would not be economic in the absence of royalty relief. The Secretary must then determine the volume of production on

which no royalty would be due in order to make the new production from the lease economically viable. This determination is done on a case-by-case basis. Production from leases in the same water depth and area issued after November 28, 2000, also can qualify for royalty suspension in addition to any that may be included in their lease terms.

In addition, Federal policy and statute require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), Office of Management and Budget (OMB) Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133 110 Stat. 1321, April 26, 1996) authorize the Minerals Management Service (MMS) to collect these fees to reimburse us for the cost to process applications or assessments.

Regulations at 30 CFR part 203 implement these statutes and policy and require respondents to pay a fee to request royalty relief. Section 203.3 states that, ''We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs as well as provide other information necessary to administer royalty relief.''

The MMS use the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impacts to both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the government that they might not otherwise receive. We could not make an informed decision without the collection of information required by 30 CFR part 203.

We will protect information from respondents considered proprietary according to 30 CFR parts 203.6(b) and 250, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). No items of a sensitive nature are collected. Responses are required to obtain a benefit.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 4,721 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 203	Reporting or recordkeeping requirement 30 CFR part 203	Application fees		
		Hour burden	Average number of annual responses	Annual burden hours
43(a); 46(a)	Notify MMS of intent to begin drilling	1	45	45
43(b)(1), (2), (d), (e)	Notify MMS that production has begun, request extension, request confirmation of the size of RSV.	2	15	30
46	Provide data from well to confirm and attest well drilled was an unsuccessful certified well and request supplement.	8	10	80
51; 83; 84	Application—leases that generate earnings that cannot sustain continued production (end-of-life lease).	100	1 Application every 3 years	34 (rounded)
		Application ⅓ × $8,000 = $2,667 (rounded)* Audit ⅓ × $12,500 = $4,167 (rounded)		
55	Renounce relief arrangement (end-of-life) (seldom, if ever will be used; minimal burden to prepare letter).	1	1 Letter every 3 years	1 (rounded)
61; 62; 64; 65; 71; 83; 85–89	Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project).	2,000	1 Application every 3 years	667 (rounded)
		Application ⅓ × $19,500 = $6,500		
61; 62; 64; 65; 203.71; 203.83; 203.85–89	Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00, that have not produced (pre-act or post-2000 deep water leases).	2,000	1 Application every 3 years	667 (rounded)
		Application ⅓ × $34,000 = $11,334 (rounded)* Audit ⅓ × $37,500 = $12,500		
61; 62; 64; 65; 71; 83; 85–89	Application—preview assessment (seldom if ever will be used as applicants generally opt for binding determination by MMS instead).	900	1 Application every 3 years	300
		Application ⅓ × $34,000 = $11,334 (rounded)		
74; 75	Redetermination	500	1 Redetermination every 3 years	167 (rounded)
		Application ⅓ × $16,000 = $5,334 (rounded)*		
70; 81; 90; 91	Submit fabricator's confirmation report	20	1 Report every 3 years	7 (rounded)
70; 81; 90; 92	Submit post-production development report	50	1 Report* every 3 years	17 (rounded)
70; 79(a)	Request reconsideration of MMS field designation.	400	1 Request every 3 years	134 (rounded)

Citation 30 CFR 203	Reporting or recordkeeping requirement 30 CFR part 203	Application fees		
		Hour burden	Average number of annual responses	Annual burden hours
77	Renounce relief arrangement (deep water) (seldom, if ever will be used; minimal burden to prepare letter).	1	1 Letter every 3 years	1 (rounded)
79(c)	Request extension of deadline to start construction.	2	1 Request every 3 years	1 (rounded)
80	Application—apart from formal programs for royalty relief for marginal producing lease (Special Case Relief).	250	2 applications	500
		Application 2 × $8,000** = $16,000 Audit 1 × $10,000 = $10,000		
80	Application—apart from formal programs for royalty relief for marginal expansion project or marginal non-producing lease (Special Case Relief).	GOM 1,000	2 Applications	2000
		Application 2 × $19,500** = $39,000 Audit 1 × $20,000 = $20,000		
		POCS 40	1 Application	40
		Application 1 × $6,500*** = $6,500		
81; 83–89	Required reports	Burden included with applications		0
83	Application—short form to add or assign pre-Act lease.	40	1 Application every 3 years	14 (rounded)
		Application ⅓ × $1,000 = $334 (rounded)		
91	Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request).	8	2 Recordkeepers	16
Total Annual Burden			89 Responses	4,721 Hours
		Total Fees = $145,670		

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are two non-hour costs associated with this information collection. The estimated non-hour cost burden is $280,670. This estimate is based on:

(a) *Application and audit fees.* The total annual estimated cost burden for these fees is $145,670 (refer to burden chart).

(b) *Cost of reports prepared by independent certified public accountants.* Under § 203.81, a report prepared by an independent certified public accountant (CPA) must accompany the application and post-production report (expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRRA applications will require this report at two stages—with the application and post-production development report for successful applicants. MMS estimates approximately three submissions each year at an average cost of $45,000 per report, for a total estimated annual cost burden of $135,000.

The total of the two burdens is estimated at $280,670.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 15, 2006, we published a **Federal Register** notice (71 FR 13420) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 203.82 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 203 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received two comments in response to these efforts. Neither comment was germane to the IC cost or hour burden or the subject of the collection itself.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 20, 2006.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will

not be considered. There may be circumstances in which we 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. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of primary.'' Unsupported assertions will not meet this burden. In the absence of exception, documentable circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: September 12, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E6–19514 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final General Management Plan and Comprehensive River Management Plan/Middle and South Forks of the Kings River and North Fork of the Kern River; Sequoia and Kings Canyon National Parks, Tulare and Fresno Counties, California; Notice of Availability of Final Environmental Impact Statement

Summary: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement (EIS) for the General Management Plan (GMP) and Comprehensive River Management for the Middle and South Forks Kings River and the North Fork Kern River and for Sequoia and Kings Canyon National Parks located in California. The purpose and need for the plans is to establish a park vision for the next 15–20 years, provide direction for the management of wild and scenic rivers, replace an outdated master plan, guide management of cultural and natural resources, address unresolved issues in specific areas, and address the changing context of the parks within the regional ecosystem.

Proposed Plan and Alternatives: The final EIS describes and analyzes five alternatives which respond to both NPS planning requirements and to the issues identified during the public scoping process. The *No-Action* alternative would continue current management direction, and it is the baseline for comparing the other alternatives (it was originally Alternative B when the alternatives were first presented to the public in the winter of 2000). The *Preferred Alternative* would accommodate sustainable growth and visitor enjoyment, protect ecosystem diversity, and preserve basic character while adapting to changing user groups (this was also determined to be ''environmentally preferred''). *Alternative A* would emphasize natural ecosystems and biodiversity, with reduced use and development; *Alternative C* would preserve the parks' traditional character and retain the feel of yesteryear, with guided growth; and *Alternative D* would preserve the basic character and adapt to changing user groups. Also included is a comprehensive river management plan for the portions of the Middle and South Forks of the Kings River and the North Fork of the Kern River, which have been designated by Congress as components of the national wild and scenic rivers system. The purpose of the river management plan is to provide direction and overall guidance on the management of lands and uses within the river corridors. Regarding wilderness, although the GMP does address compatibility of the alternatives with the park's backcountry and wilderness values, there is no new wilderness designation proposed under any of the alternatives. The foreseeable environmental consequences of each alternative, and appropriate mitigation strategies, are identified and analyzed in the EIS.

Public Review and Changes in the Final Document: Prior to development of the Draft EIS, nine scoping meetings were held, seven planning newsletters issued; alternatives planning workshops were held in seven cities; and the parks regularly communicated with the cooperating association and concessioners authorized to operate in the parks. Meetings and contacts have occurred with special use permittees, private landowners; and numerous other stakeholders. The project mailing list included more than 3700 entries. The Draft EIS was available for 150 days review during May–October, 2004. It was made available at local area libraries, and could be reviewed electronically via *http://www.nps.gov/seki or http://planning.den.nps.gov/seki.* Printed and CD copies were sent upon request, and also distributed to agencies and organizations listed as recipients in the Consultation and Coordination section of the EIS. Public meetings to facilitate review and comment on the Draft EIS were held during the comment period both in the parks, as well as in the following locations: Thee Rivers, Visalia, Fresno/Clovis, Sacramento, San Francisco, Los Angeles and Bishop. Approximately 400 comments were received; this information resulted in minor corrections and clarifications to the Draft EIS/GMP. Editorial changes and additional explanatory text on topics of interest were incorporated. There were no substantive changes due to public commentary.

Following the closure of the public comment period, Pub. L. 108–447 was enacted and changes to the document to accommodate this public law were made with regard to two areas with special use permits: (1) The law that appended the Mineral King area to the park in 1978 required that use of cabins at Mineral King be phased out upon the deaths of the permittees of record. Pub. L. 108–447 amended Pub. L. 95–625 by authorizing indefinite extension of special use permits to heirs, successors and assigns; and (2) Pub. L. 108–447 amended Pub. L. 99–338 to allow the Secretary to permit Southern California Edison Co. up to two additional ten-year permit periods of hydroelectric operations until 2026.

Description of Alternatives: The Final EIS for the GMP/Comprehensive River Management Plans includes four action alternatives and a no-action alternative which continues current management. The Comprehensive River management Plan would be common to every alternative. The *No-Action* Alternative (Continue Current Management): The parks are managed as they are now in accordance with approved plans (such as development concept plans, and the 1996 Giant Forest Interim Management Plan); negative resource impacts and visitor demands are mitigated by relocating development, reducing some uses, or confining new developed areas. Visitor uses are reassessed and revised as new information about natural and cultural resource impacts and visitor needs emerges. Current facilities are inadequate for park needs and visitor use levels, and crowding is common in some areas.

Preferred Alternative: The parks' appeal is broadened to be more relevant to diverse user groups, Increased day use is accommodated, and overnight visitation is retained. The integrity of

park resources is paramount. Stronger educational and outreach programs provide enjoyment and introduce park conservation values. The basic character of park activities and the rustic architecture of facilities are retained so that the parks remain strikingly different from surrounding areas. Park administrative facilities are redesigned and may be relocated outside the parks. Park facilities accommodate sustainable growth. Stock use continues with appropriate management and monitoring.

Alternative A: Emphasize Natural Ecosystems and Biodiversity; Reduce Use and Development: The parks are natural resource preserves; they are primarily valued because they contain publicly owned resources that will be conserved for the future. Levels of use are lower than at present, and visitor experiences are more directly connected to natural resources and provide more solitude. The parks contrast strongly with surrounding lands which are continuing to develop. Park managers aggressively cooperate with the managers of surrounding lands to enhance range-wide biodiversity.

Alternative C: Preserve Traditional Character and Retain the Feel of Yesteryear; Guide Growth: The parks present a traditional character and the feeling of yesteryear, where experiences are more reminiscent of how visitors used the parks in the past. This is conveyed through rustic architecture and lower impact recreational activities (such as sightseeing and hiking) that were popular from the 1920s to the 1960s, providing an experience that is strikingly different from that in an urban setting. Redesigned developed areas accommodate limited growth; overnight stays are encouraged. Negative impacts on natural resources are controlled, so as to maintain or improve resource conditions.

Alternative D: Preserve Basic Character and Adapt to Changing User Groups; Guide Growth: The parks preserve some of their traditional character and rustic architecture, but diverse new user groups and uses are encouraged. Day use is more common. Facilities are expanded to meet users' needs, while frequent interpretive programs are offered to educate, entertain, and instill a sense of park conservation values. Negative impacts on natural resources are controlled or mitigated, so as to maintain or improve resource conditions.

Addresses and Further Information: Copies of the Final EIS will be available for public review in the office of the Superintendent and at local area public libraries, and may also be requested (by those not presently on the mailing list) by contacting the park by letter at: Final EIS/GMP, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, CA 93271–9651; by telephone at (559) 565–3101; or by e-mail at *seki_superintendent@nps.gov*. Please note that names and addresses of all respondents will become part of the public record. Our practice is to make all comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Decision: The National Park Service will execute a Record of Decision not sooner than 30 days following publication by the Environmental Protection Agency of their notice of filing of the Final EIS in the **Federal Register**. As a delegated EIS the official responsible for the final approval of the General Management Plan and Comprehensive River Management Plan is the Regional Director; subsequently the official responsible for implementing the new plans would be the Superintendent, Sequoia and Kings Canyon National Parks.

Dated: October 6, 2006.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 06–9279 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–X2–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on August 2, 2006. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Contract Services Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation

regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

The February 23, 2006, notice should be used as a reference point to identify changes. The numbering system in this notice corresponds with the numbering system in the February 23, 2006, notice.

Definitions of Abbreviations Used in This Document

BCP; reclamation	Boulder Canyon Project; Bureau of Reclamation
CAP	Central Arizona Project.
CVP	Central Valley Project.
CVPIA	Central Valley Project Improvement Act.
CRSP	Colorado River Storage Project.
FR	Federal Register.
IDD	Irrigation and Drainage District.
ID	Irrigation District.
M&I	Municipal and Industrial.
NMISC	New Mexico Interstate Stream Commission.
O&M	Operation and Maintenance.
P–SMBP	Pick-Sloan Missouri Basin Program.
PPR	Present Perfected Right.
RRA	Reclamation Reform Act of 1982.
SOD	Safety of Dams.
SRPA	Small Reclamation Projects Act of 1956.
WD	Water District.

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

Modified contract action:

16. Two irrigation water user entities, Boise Project, Idaho: Long-term renewal and/or conversion of two irrigation water service contracts for supplemental irrigation use of up to 2,218 acre-feet of storage space in Lucky Peak Reservoir, a Corps of Engineers' project on the Boise River, Idaho. Sixteen water service contracts have been converted to repayment contracts for a total of 68,000 acre-feet of storage space.

Completed contract action:

19. Stanfield ID, Umatilla Project, Oregon: Contract for long-term boundary expansion to include lands outside of federally recognized district boundaries. Contract executed September 8, 2006.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

44. Elk Creek Community Services District, CVP, California: Interim renewal of water service contract for an initial period of 3 years, with subsequent interim renewal contracts of 2 years pursuant to section 3404(c) of the CVPIA.

45. Westlands WD, CVP, California: Interim renewal of water service contract (Case No. CV–79–106–EDP) for an initial period of 3 years, with subsequent interim renewal contracts of 2 years pursuant to section 3404(c) of the CVPIA.

46. Westlands WD, CVP, California: Interim renewal of water service contract (No. 14–06–200–495A) for an initial period of 3 years, with subsequent interim renewal contracts of 2 years pursuant to section 3404(c) of the CVPIA.

Modified contract actions:

42. Cawelo WD and Lindsay-Strathmore ID, CVP, California: Long-term Warren Act contract for conveying nonproject water for a non-CVP contractor.

43. Elk Creek Community Services District, CVP, California: Renewal of long-term water service contract for up to 100 acre-feet for a period of 40 years.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8081.

New contract actions:

42. City of Needles, BCP, California: Amendment to contract No. 05–XX–30–W0445 to include PPR No. 44 for an annual diversion of 1,260 acre-feet or the annual consumptive use of 273 acre-feet, whichever is less.

43. Cibola Resources, LLC, BCP, Arizona: Assign contract No. 06-XX–30-W0449 to B&F Investment, LLC, transfer the 60-acre-foot entitlement to B&F under that contract, and enter into a new contract with B&F to change the type and place of use.

44. Rudy J. Leon and Helen V. Thomas, BCP, California: Enter into a contract for their entitlement of PPR No. 38 for 1.7086 acre-feet of water per year.

Completed contract actions:

11. Berneil Water Co., CAP, Arizona: Partial assignment of 200 acre-feet of water per year to the Cave Creek Water Company.

37. Cibola Valley IDD, BCP, Arizona: Assign 60 acre-feet per year of the district's entitlement to Arizona fourth-priority water to Cibola Resources, LLC, for agricultural purposes.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contraction:

1.(h) Michael and Nancy Courtney Schell, Aspinall Storage Unit, CRSP: The Schells have requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir. An augmentation plan is not required for their direct withdrawal of water from the reservoir.

Modified contract:

32. Emery County Project, Utah: The Huntington Cleveland Irrigation Company has requested a contract for carriage of up to 14,074 acre-feet of nonproject water; utilizing Huntington North Reservoir as a regulating feature associated with their Salinity Control Project.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7752.

New contract actions:

49. Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado: Long-term exchange, conveyance, and storage contract to implement the Exhibit B Agreement of the Settlement Agreement on Operating Procedures for Green Mountain Reservoir Concerning Operating Limitations and in Resolution of the Petition Filed August 7, 2003, in Case No. 49-CV–2782 (The United States v Northern Colorado Water Conservancy District, *et al.*, U.S. District Court for the District of Colorado, Case No. 2782 and Consolidated Case Nos. 5016 and 5017).

50. Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity for storage and exchange in Green Mountain Reservoir in the Colorado-Big Thompson Project.

Modified contract actions:

9. Highland-Hanover ID, Hanover-Bluff Unit, P-SMBP, Wyoming: Negotiate long-term water service contract.

10. Upper Bluff ID, Hanover-Bluff Unit, P-SMBP, Wyoming: Negotiate long-term water service contract.

13. Savage ID, P-SMBP, Montana: The district is currently seeking title transfer. The contract is subject to renewal pending outcome of the title transfer process. A 5-year interim contract was executed May 7, 2003, to ensure a continuous water supply.

Completed contract actions:

8. City of Cheyenne, Kendrick Project, Wyoming: Negotiate a long-term contract for storage space for replacement water on a daily basis in Seminoe Reservoir. A temporary contract has been issued pending negotiation of the long-term contract. Long-term contract was executed October 1, 2006.

16. Glendo Unit, P-SMBP, Wyoming: Amendments to long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company. Contract amendments were executed June 28, 2006.

17. Glendo Unit, P-SMBP, Nebraska: Amendments to long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID. Contract amendments were executed June 28, 2006.

27. Hill County WD, Milk River Project, Montana: Drafting contracts for renewal of municipal water supply contract No. 14–06–600–8954 which expired August 1, 2006. The proposal includes splitting the contract between Hill County WD and North Havre County WD which both receive their full water supply under the current contract. Contract No. 069E670064 with Hill County WD was executed July 28, 2006; and contract No. 069E670065 with North Havre County WD was executed August 4, 2006.

Discontinued contract action:

21. Canadian River Municipal Water Authority, Lake Meredith Salinity Control Project, New Mexico and Texas: Negotiation of a contract for the transfer of control (care and O&M) of the project to the Authority in accordance with Pub. L. 102–575, Title VIII, Section 804(c).

Dated: September 27, 2006.

Roseann Gonzales,

Director, Office of Program and Policy Services.

[FR Doc. E6–19554 Filed 11–17–06; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–891 (Review)]

Foundry Coke From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on foundry coke from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on foundry coke from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 6, 2006.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On November 6, 2006, the Commission determined that the domestic interested party group response to its notice of institution (71 FR 43518) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on November 28, 2006, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by ABC Coke, Citizens Gas & Coke Utility, Erie Coke, Sloss Industries Corp., and Tonawanda Coke Corp. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Commission should reach in the review. Comments are due on or before December 1, 2006 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 1, 2006. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 15, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–19542 Filed 11–17–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 3, 2006, a proposed Consent Decree in *United States* v. *Honeywell International, Inc., et al.*, Civil Action No. 06–00387–MCE–JFM, was lodged with the United States District Court for the Eastern District of California.

In this action the United States sought reimbursement of response costs, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), from Honeywell International, Inc. (Honeywell) and others, incurred or to be incurred by EPA, for response actions taken at or in connection with the release or threatened release of hazardous substances at the Central Eureka Mine Superfund Site in Amador County, California. The Consent Decree will settle claims against defendant Honeywell. Pursuant to the Consent Decree, Honeywell will pay the sum of $2,000,000 for past response costs incurred at the Site, in addition to the approximately $3 million Honeywell had previously spent responding to releases at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Honeywell International, Inc., et al.*, D.J. Ref. 90–11–3–1692/1.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of California, 501 I Street, Sacramento, California 95814, and at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $*5.25* (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9276 Filed 11–17–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decrees

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *Pala Band of Mission Indians, et al.*, (S.D. Cal.), 06–cv–2323–H (NLS), were lodged with the United States District Court for the Southern District of California on November 2, 2006.

These proposed consent decrees concern a complaint filed by the United States against the Pala Band of Mission Indians, Brown Bulk Transportation Co., Valley Material and Supply, Inc., and James A. Brown pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. One proposed consent decree resolves the United States' allegations against the Pala Band of Mission Indians by requiring the Tribe to pay a civil penalty and to mitigate the environmental impacts by making a contribution to the Nature Conservancy. The second proposed consent decree resolves the United States' claims against Brown Bulk Transportation Co., Valley Material and Supply, Inc., and James A. Brown by requiring these Defendants to pay a civil penalty.

The Department of Justice will accept written comments relating to these proposed Consent decrees for thirty (30) days from the date of publication of this Notice. Please address comments to Pamela S. Tonglao, United States Department of Justice, Environment and Natural Resources Division, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Pala Band of Mission Indians, et al.*, (S.D. Cal.), 06–CV–2323–H (NLS), DJ #90–5–1–1–16816.

The proposed consent decrees may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 06–9278 Filed 11–17–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

No Fear Act Notice

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor (DOL) is providing notice to all of its employees, former employees, and applicants for employment about the rights and remedies that are available to them under Federal antidiscrimination and whistleblower protection laws. This notice fulfills DOL's notification obligations under the Notification and Federal Employees Antidiscrimination and Retaliation Act (NO FEAR Act), as implemented by Office of Personnel Management (OPM) regulations.

FOR FURTHER INFORMATION CONTACT: Annabelle T. Lockhart, Director, Civil Rights Center (CRC), Frances Perkins Building, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210, *CivilRightsCenter@dol.gov*, (202) 693–6500 (VOICE) or (202) 693–6515, (800) 326–2577 (TTY/TDD).

No Fear Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status, or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a complaint or grievance through your agency's administrative or negotiated grievance procedures, if such procedures are available and apply.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505, or online through the OSC Web site, *http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections of this Notice, or, if applicable, the administrative or negotiated grievance procedures, in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for discriminatory or retaliatory conduct, or other conduct that is inconsistent with Federal antidiscrimination, whistleblower protection, and retaliation laws. Possible disciplinary actions range up to and include removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, or you may contact DOL's Civil Rights Center:

U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Civil Rights Center, Room N–4123, 200 Constitution Ave., NW., Washington, DC 20210, 202/693–6500 (voice), 202/693–6516 (TTY), *http://www.dol.gov/oasam/programs/crc/crcwelcome.htm, civilrightscenter@dol.gov.*

Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site, *http://www.eeoc.gov*, and the OSC Web site, *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Edward C. Hugler,

Deputy Assistant Secretary for Administration and Management.

[FR Doc. E6–19584 Filed 11–17–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Claim for Reimbursement-Assisted Reemployment (CA–2231). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 19, 2007.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *e-mail bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. *Background:* The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101 and Section 8104a of the FECA provides vocational rehabilitation services to eligible injured workers to facilitate their return to work. The costs of providing these vocational rehabilitation services are from the Employees' Compensation Fund. Annual appropriations language currently in Public Law 109–289 provides OWCP with the legal authority to use the amounts from the Fund to reimburse private sector employers for a portion of the salary of reemployed disabled Federal workers they have hired through OWCP's assisted reemployment program. The information collected on Form CA–2231 provides OWCP with the necessary remittance information for the employer, documents the hours of work, certifies the payment of wages to the claimant for which reimbursement is sought, and summarizes the nature and costs of the wage reimbursement program for a prompt decision by OWCP. This information collection is currently approved for use through June 30, 2007.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the extension of approval to collect this information to ensure timely and accurate payments to eligible employers for reimbursement claims.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Claim for Reimbursement-Assisted Reemployment.

OMB Number: 1215–0178

Agency Number: CA–2231

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: 20.

Total Annual Responses: 80.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 40.

Frequency: Quarterly.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $34.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 15, 2006.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. E6–19566 Filed 11–17–06; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The eleventh meeting of the Federal Economic Statistics Advisory Committee will be held on December 15, 2006 in the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.

The meeting will be held in Meeting Rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

9 a.m. Opening session.
9 a.m. New Data Collection Methods.
1 p.m. Business Lists Comparisons.
2:45 p.m. Priorities for future meetings.
3:15 p.m. Disability Questions in the Current Population Survey and the American Community Survey.
4:45 p.m. Conclude (approximate time).

The meeting is open to the public. Any questions concerning the meeting should be directed to Margaret Johnson, Federal Economic Statistics Advisory Committee, on Area Code (202) 691–5600. Individuals with disabilities, who need special accommodations, should contact Ms. Johnson at least two days prior to the meeting date.

Signed at Washington, DC, November 17, 2006.

Philip L. Rones,

Acting Commissioner of Labor Statistics.

[FR Doc. E6–19523 Filed 11–17–06; 8:45 am]

BILLING CODE 4510–24–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board (MSPB).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501), 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: MSPB has submitted an ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 12, 2006 (**Federal Register**, Volume 71, Number 176, page 53712–53713), MSPB sought comments on this ICR pursuant to 5 CFR 1320.8(d). MSPB received no comments. Additional comments should be submitted on or before December 18, 2006 to OMB (Brenda Aguilar at *baguilar@omb.eop.gov* or fax (202) 395–6974).

ADDRESSES: You may also submit comments to MSPB via any of the following methods:

E-mail: mspb.study@mspb.gov. Include ''Employee Surveys'' in the subject line of the message.

Fax: (202) 653–7211.

Mail: Cynthia Ferentinos, U.S. Merit Systems Protection Board, Suite 500, 1615 M St., NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: For information on the survey questions, contact Cynthia Ferentinos by phone on 202–653–6772, ext. 1334, by fax on 202–653–7211, or by e-mail at *cynthia.ferentinos@mspb.gov.* You may contact Ms. Ferentinos V/TDD at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Proposed Project:* ''Career Advancement Survey of Federal Employees''

As part of its purpose, MSPB is responsible for conducting studies of the Federal civil service to ensure that all Federal government agencies follow merit systems practices and avoid prohibited personnel practices. To support this research agenda, MSPB periodically conducts surveys of samples of Federal employees. To obtain insight into the current perspectives, MSPB requests approval to conduct additional surveys over the next three years.

The content of these surveys will focus on the career progression strategies utilized by Federal employees. In particular, we will examine if advancement techniques vary between groups of employees and evaluate the outcomes associated with each approach. We also plan to identify perceptions held by employees regarding discrimination and strategies that may have been used to overcome this potential barrier. In addition to the primary survey which is designed to cover all employees, we may also design a limited number of more narrowly focused surveys, which address issues unique to subpopulations of Federal employees (*e.g.*, people with disabilities).

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 0.5 hours per respondent.

Respondents/Affected Entities: Participants are selected via stratified random sampling to facilitate a representative sample of Federal employees.

Estimated Number of Respondents: 46,000.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 23,000.

Dated: November 14, 2006.

Matthew Shannon,

Deputy Clerk of the Board.

[FR Doc. E6–19521 Filed 11–17–06; 8:45 am]

BILLING CODE 7401–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–084)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States and foreign countries to practice the inventions described and claimed in ''Embedded Carbon Nanotube Array as High Performance Thermal Conductors'' ARC–15173–1 and ''System And Method using Self-Assembled Nano Structures in the Design and Fabrication of an Integrated Circuit Micro-Cooler'' ARC–15832–1 to Nanoconduction, Inc., having its principal place of business in Sunnyvale, CA. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective exclusive license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, MS 202A–4, Moffett Field, CA 94035–1000, (650) 604–5104; Fax (650) 604–2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, MS 202A–4, Moffett

Field, CA 94035–1000, (650) 604–5104; Fax (650) 604–2767. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov.*

Dated: November 9, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–19510 Filed 11–17–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–33 issued to the Tennessee Valley Authority (TVA) for operation of the Browns Ferry Nuclear Plant (BFN), Unit 1 located in Limestone County, Alabama.

The proposed amendment would delete the Technical Specification (TS) Surveillance Requirement (SR) to verify the position of a low pressure coolant injection (LPCI) crosstie valve. Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed Technical Specification change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. This TS change is administrative in nature, since it deletes the surveillance requirement (SR 3.5.1.4) to periodically verify the position of a valve which has now been physically removed from Unit 1. Originally, BFN's LPCI design included the capability for the redundant LPCI loop discharge piping to be cross-tied; however, subsequent analysis determined that the crosstie capability, under certain accident and single-failure scenarios, could result in the loss of injection from both LPCI loops. This analysis also determined that the crosstie capability was not required for the mitigation of any design basis events. Accordingly, since certain crosstie failure modes could prevent mitigation of these or other events, TVA modified the plant design to eliminate the crosstie capability. This was accomplished by closing and deenergizing the motor-operated isolation valve that existed in the crosstie flow path and adding an SR to require periodic verification that the valve was closed and deenergized.

The modified Unit 1 configuration [*i.e.*, LPCI loop discharge crosstie valve removed and the associated remaining piping capped or closed with a blind flange] eliminates the possibility of an undesired flow path. Additionally, the Seismic Class I qualification and the ASME Section XI classification of the remaining piping in the new plant configuration are equivalent to the replaced line configuration. Accordingly, the TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed Technical Specification change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The physical modification eliminating the LPCI loop discharge crosstie capability does not require revision of the safety analyses. In addition, since the LPCI loop crosstie valve has been physically removed from the system and the associated lines capped or closed via blind flange, the possibility for inadvertent flow between the LPCI loops has been eliminated. Removing the valve and capping/flanging the remaining piping is an improvement over the old configuration. The LPCI function will be accomplished in the same way as before the modification, and no new failure modes have been introduced.

3. Does the proposed Technical Specification change involve a significant reduction in a margin of safety?

Response: No. This TS changes does not involve a reduction in the margin of safety since removal of the LPCI loop cross tie valve eliminates the possibility of flow between the two LPCI loops, and it obviates the need for valve position verification contained in the SR. In addition, since removing the valve and capping/flanging the residual piping meets the intent of the SR, the safety analysis remains unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to

intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated November 9, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of November 2006.

For the Nuclear Regulatory Commission.

Margaret H. Chernoff,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–19569 Filed 11–17–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

In the Matter of All Panoramic and Underwater Irradiators Authorized To Possess Greater Than 370 Terabecquerels (10,000 Curies) Byproduct Material in the Form of Sealed Sources; Order Imposing Compensatory Measures (Effective Immediately)

[EA 06–251]

I

The Licensees identified in Attachment 1 to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 and 10 CFR part 36

or comparable Agreement State regulations by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing possession of greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources either in panoramic irradiators that have dry or wet storage of the sealed sources or in underwater irradiators in which both the source and the product being irradiated are under water. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations, require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement States regulations, require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Licensees as prudent, measures to address the current threat environment. Therefore, the Commission is imposing the requirements, as set forth in Attachment 2 on all Licensees identified in Attachment 1 of this Order [1] who currently possess, or have near term plans to possess, greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that Licensees may have already initiated many measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe use and storage of the sealed sources.

Although the additional security measures implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. The security measures contained in Attachment 2 of this Order contain safeguards information and will not be released to the public. The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of safeguards information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to ''issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information. * * *'' This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees must ensure proper handling and protection of safeguards information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of safeguards information contained in Attachment 2 to the Order Imposing Requirements for the Protection of Certain Safeguards Information (EA–06–241). The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 to the Order Imposing Requirements for the Protection of Certain Safeguards Information (EA–06–241), applicable to the handling and unauthorized disclosure of safeguards information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to safeguards information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check. A need to know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

In order to provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing possession greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources in a panoramic or underwater irradiator shall implement the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR part 36, *it is hereby ordered, effective immediately, that all licensees identified in Attachment 1 to this order shall comply with the requirements of this order as follows:*

A. The licensees shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order. The licensee shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by May 8, 2007, or the first day that greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources is possessed, which ever is later.

[1] Attachment 1 contains OFFICIAL USE ONLY—Security Related Information sensitive information and Attachment 2 contains SAFEGUARDS INFORMATION and will not be released to the public.

B.1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B.2. If the Licensee considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment 2.

C.2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's or Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this order shall be maintained until the Commission determines otherwise.

Licensee response to Conditions B.1, B.2, C.1, and C.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be safeguards information shall be put in a separate enclosure or attachment and, marked as ''SAFEGUARDS INFORMATION—MODIFIED HANDLING'' and mailed (no electronic transmittals i.e., no e-mail or FAX) to the NRC in accordance with Attachment 2 to the Order Imposing Requirements for the Protection of Certain Safeguards Information (EA–06–241).

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated: November 9, 2006.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Licensees

Redacted.

Attachment 2: Compensatory Measures for Panoramic and Underwater Irradiator Licensees

Redacted.

[FR Doc. E6–19570 Filed 11–17–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of November 20, 27, December 4, 11, 18, 25, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Matters To Be Considered

Week of November 20, 2006

There are no meetings scheduled for the Week of November 20, 2006.

Week of November 27, 2006—Tentative

Thursday, November 30, 2006

12:55 p.m. Affirmation Session (Public Meeting) (Tentative), a. Hydro Resources, Inc. (Crownpoint, NM) Intervenors' Petition for Review of LBP–06–19 (Final Partial Initial Decision—NEPA Issues) (Tentative).

Week of December 4, 2006—Tentative

Thursday, December 7, 2006

9:30 a.m. Discussion of Management Issues (Closed—Ex. 2).

Week of December 11, 2006—Tentative

Monday, December 11, 2006

1:30 p.m. Briefing on Status of Decommissioning Activities (Public Meeting) (Contact: Keith McConnell, 301–415–7295).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Tuesday, December 12, 2006

9:30 a.m. Briefing on Threat Environment Assessment (Closed—Ex. 1)

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

Wednesday, December 13, 2006

9:30 a.m. Briefing on Status of Equal Employment Opportunity (EEO) Programs (Public Meeting) (Contact: Barbara Williams, 301–415–7388).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 14, 2006

9:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 18, 2006—Tentative

There are no meetings scheduled for the Week of December 18, 2006.

Week of December 25, 2006—Tentative

There are no meetings scheduled for the Week of December 25, 2006.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—301–415–1292. Contact person for more information: Michelle Schroll, 301–415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041,TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 14, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–9292 Filed 11–16–06; 10:17 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation and Model License Amendment Request on Technical Specification Improvement Regarding Deletion of E Bar Definition and Revision to Reactor Coolant System Specific Activity Technical Specification; Babcock and Wilcox Pressurized Water Reactors, Westinghouse Pressurized Water Reactors, Combustion Engineering Pressurized Water Reactors 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 U.S. Nuclear Regulatory Commission (NRC) has prepared a model license amendment request (LAR), model safety evaluation (SE), and model proposed no significant hazards consideration (NSHC) determination related to deletion of E Bar (average disintegration energy, $\bar{E}$) definition and revision to reactor coolant system (RCS) specific activity technical specification. This request revises the RCS specific activity specification for pressurized water reactors to utilize a new indicator, Dose Equivalent Xenon-133 instead of the current indicator known as E Bar.

The purpose of these models is to permit the NRC to efficiently process amendments to incorporate these changes into plant-specific Technical Specifications (TS) for Babcock and Wilcox, Westinghouse, and Combustion Engineering Pressurized Water Reactors (PWRs). Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the model LAR, model SE and NSHC determination to its plant. The NRC staff is requesting comments on the model LAR, model SE and NSHC determination for referencing in license amendment applications.

DATES: The comment period expires 30 days from the date of this publication. 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, Rulemaking, Directives, and Editing 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.

Submit comments by electronic mail to: CLIIP@nrc.gov.

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Trent Wertz, Mail Stop: O–12H2, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1568.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process (CLIIP) for Adopting Standard Technical Specifications Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished 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 proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that deletes the E Bar definition and revises the RCS specific activity technical specification of the Babcock and Wilcox PWR STS, Revision 3 of NUREG–1430, Westinghouse PWR STS Revision 3 NUREG–1431, and Combustion Engineering PWR STS Revision 3 NUREG–1432. 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 proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Following the public comment period, the model LAR and model SE will be finalized, and posted on the NRC webpage. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves replacement of the current PWR TS 3.4.16 limits on RCS gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe-133 (DEX) definition that would replace the current E–Bar average disintegration energy definition. In addition, the current dose equivalent I–131 (DEI) definition would be revised to allow the use of additional thyroid dose conversion factors (DCFs). By letter dated September 13, 2005, the Technical Specifications Task Force (TSTF) proposed these changes for incorporation into the STS as TSTF–490, Revision 0.

Applicability

These proposed changes will revise the definition of DOSE EQUIVALENT I–131, delete the definition of ''E–Bar,'' AVERAGE DISINTEGRATION ENERGY, add a new definition for DOSE EQUIVALENT XE–133, and revise LCO 3.4.16 for Babcock and Wilcox, Westinghouse, and Combustion Engineering PWRs, STS NUREGs 1430, 1431, and 1432.

To efficiently process the incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed by TSTF–490, Revision 0, using the CLIIP submit an LAR that adheres to the following model. Any variations from the model LAR should be explained in the licensee's submittal. Variations 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. Significant variations from the approach, or inclusion of additional amendment requests, may result in staff rejection of the CLIIP adoption request. Instead, licensees desiring significant variations and/or additional changes should submit a non-CLIIP LAR that does not request to adopt TSTF–490 via CLIIP.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of this publication. Following the NRC staff's evaluation of comments received as a result of this notice, the NRC staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the model LAR, model SE or model NSHC determination as a result of public comments). If the NRC staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The NRC staff will, in turn, issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license will announce the revised requirements for each plant that applies for and receives the requested change.

Dated at Rockville, Maryland this 14th day of November, 2006.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

For inclusion on the technical specification web page. The following example of an application was prepared by the NRC staff to facilitate the adoption of Technical Specifications task force (TSTF) Traveler TSTF–490, Revision 0 ''deletion of E-bar definition and revision to RCS Specific Activity Tech Spec.'' The model provides the expected level of detail and content for an application to adopt TSTF–490, Revision 0. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as NRC regulations.

U.S. Nuclear Regulatory Commission,
Document Control Desk,
Washington, DC 20555.

SUBJECT: Plant Name, Docket No. 50-[xxx,]
Re: Application for Technical Specification Improvement to Adopt TSTF–490, Revision 0, ''deletion of E-bar definition and revision to RCS Specific Activity Tech Spec''

Dear Sir or Madam: In accordance with the provisions of Section 50.90 of Title 10 of the Code of Federal Regulations (10 CFR), [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.]. The proposed changes would replace the current pressurized water reactor (PWR) Technical Specification (TS) 3.4.16 limits on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe-133 (DEX) definition that would replace the current E-Bar (E) average disintegration energy definition. In addition, the current dose equivalent I–131 (DEI) definition would be revised to allow the use of additional thyroid dose conversion factors (DCFs).

The changes are consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–490, Revision 0, ''Deletion of E-Bar Definition and Revision to RCS Specific Activity Tech Spec.'' The availability of this TS improvement was announced in the **Federal Register** on [DATE] ([ ]FR[ ]) as part of the Consolidated Line Item Improvement Process (CLIIP).

Enclosure 1 provides a description and assessment of the proposed changes, as well as confirmation of applicability. Enclosure 2 provides the existing TS pages and TS Bases marked-up to show the proposed changes. Enclosure 3 provides final TS pages and TS Bases pages.

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS]. In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. [Note that request may be notarized in lieu of using this oath or affirmation statement]. If you should have any questions regarding this submittal, please contact [ ].

Sincerely,

Name, Title

Enclosures:

1. Description and Assessment of Proposed Changes
2. [Proposed Technical Specification Changes and Technical Specification Bases Changes]
3. [Final Technical Specification and Bases pages]

cc: NRR Project Manager, Regional Office, Resident Inspector, State Contact, ITSB Branch Chief.

Enclosure 1—Description and Assessment of Proposed Changes

1.0 Description

This letter is a request to amend Operating License(s) [LICENSE NUMBER(S)] for [PLANT/UNIT NAME(S)].

The proposed changes would replace the current limits on primary coolant gross specific activity with limits on primary coolant noble gas activity. The noble gas activity would be based on DOSE EQUIVALENT XE–133 and would take into account only the noble gas activity in the primary coolant.

Technical Specification Task Force (TSTF) change traveler TSTF–490, Revision 0, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec'' was announced for availability in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Proposed Changes

Consistent with NRC-approved TSTF–490, Revision 0, the proposed TS changes include:

- Revised definition of DOSE EQUIVALENT I–131
- Deletion of the definition of ''E–Bar, AVERAGE DISINTEGRATION ENERGY
- Adding a new definition for DOSE EQUIVALENT XE–133
- Revised LCO 3.4.16, ''RCS Specific Activity'' to delete references to gross specific activity, and reference limits on DOSE EQUIVALENT I–131 and DOSE EQUIVALENT XE–133, and delete Figure 3.4.16–1, ''Reactor Coolant DOSE EQUIVALENT I–131 Specific Activity Limit versus Percent of RATED THERMAL POWER.''
- Revised Applicability of LCO 3.4.16 to indicate the LCO is applicable in MODES 1,2,3, and 4
- [Modified ACTIONS Table as follows:

A. Condition A is modified to delete the reference to Figure 3.4.16–1, and define an upper limit that is applicable at all power levels.

B. NUREG–1430 and NUREG–1432 ACTIONS are reordered, moving Condition C to Condition B.

C. Condition B (was Condition C in NUREG–1430 and NUREG 1432) is modified to provide a Condition and Required Action for DOSE EQUIVALENT XE–133 instead of gross specific activity. The Completion Time is changed from 6 hours to 48 hours. A Note stating the applicability of LCO 3.0.4.c is added, consistent with the Note to Required Action A.1.

D. Condition C (was Condition B in NUREG–1430 and NUREG–1432) is modified based on the changes to Conditions A and B and to reflect the change in the LCO Applicability]

- Revised SR 3.4.16.1 to verify the limit for DOSE EQUIVALENT XE–133. A Note is added, consistent with SR 3.4.16.2 to allow entry into MODES 4,3, and 2 prior to performance of the SR.
- Deleted SR 3.4.16.3

3.0 Background

The background for this application is as stated in the model SE in NRC's Notice of Availability published on [DATE]([ ] FR [ ]), the NRC Notice for Comment published on [DATE] ([ ] FR [ ]), and TSTF–490, Revision 0.

4.0 Technical Analysis

[LICENSEE] has reviewed References 1 and 2, and the model SE published on [DATE] ([ ]FR [ ]) as part of the CLIIP Notice for Availability. [LICENSEE] has applied the methodology in Reference 1 to develop the proposed TS changes. [LICENSEE] has also concluded that the justifications presented in TSTF–490, Revision 0 and the model SE prepared by the NRC staff are applicable to [PLANT, UNIT NOS.], and justify this amendment for the incorporation of the changes to the [PLANT] TS.

5.0 Regulatory Analysis

A description of this proposed change and its relationship to applicable regulatory requirements and guidance was provided in the NRC Notice of Availability published on [DATE] ([ ] FR [ ]), the NRC Notice for Comment published on [DATE] ([ ] FR [ ]), and TSTF–490, Revision 0.

6.0 No Significant Hazards Consideration

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

7.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental consideration included in the model SE published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented therein are applicable to [PLANT] and the determination is hereby incorporated by reference for this application.

8.0 References

1. Federal Register Notices:

Notice for Comment published on [DATE] ([ ] FR [ ])

Notice of Availability published on [DATE] ([ ] FR [ ])

MODEL SAFETY EVALUATION

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

Technical Specification Task Force TSTF–490, Revision 0

''Deletion of E-Bar Definition and Revision to RCS Specific Activity Tech Spec''

1.0 INTRODUCTION

By letter dated [_, 20_], [LICENSEE] (the licensee) proposed changes to the technical specifications (TS) for [PLANT NAME]. The requested changes are the adoption of TSTF–490, Revision 0, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec'' to the Pressurized Water Reactor (PWR) Standard Technical Specifications (STS), which was proposed by the Technical Specifications Task Force (TSTF) by letter on September 13, 2005. This TSTF involves changes to NUREG–1430, NUREG–1431, and NUREG–1432 Section 3.4.16 limits on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe–133 (DEX) definition that would replace the current E-Bar average disintegration energy definition. In addition, the current dose equivalent I–131 (DEI) definition would be revised to allow the use of additional thyroid dose conversion factors (DCFs).

2.0 REGULATORY EVALUATION

The Nuclear Regulatory Commission (NRC) staff evaluated the impact of the proposed changes as they relate to the radiological consequences of affected design basis accidents (DBAs) that use the reactor coolant system (RCS) inventory as the source term. The source term assumed in radiological analyses should be based on the activity associated with the projected fuel damage or the maximum TS RCS values, whichever maximizes the radiological consequences. The limits on RCS specific activity ensure that the offsite doses are appropriately limited for accidents that are based on releases from the RCS with no significant amount of fuel damage.

The Steam Generator Tube Rupture (SGTR) accident and the Main Steam Line Break (MSLB) accident, with a few exceptions, do not result in fuel damage and therefore the radiological consequence analyses are based on the release of primary coolant activity at maximum TS limits. For accidents that result in fuel damage, the additional dose contribution from the initial activity in the RCS is not normally evaluated and is considered to be insignificant in relation to the dose resulting from the release of fission products from the damaged fuel.

[For licensees that incorporate the source term as defined in Technical Information Document (TID) 14844, AEC, 1962, ''Calculation of Distance Factors for Power and Test Reactors Sites,'' in their dose consequence analyses, the staff uses the regulatory guidance provided in NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants,'' Section 15.1.5, ''Steam System Piping Failures Inside and Outside of Containment (PWR),'' Appendix A, ''Radiological Consequences of Main Steam Line Failures Outside Containment,'' Revision 2, for the evaluation of MSLB accident analyses and NUREG–0800, SRP Section 15.6.3, ''Radiological Consequences of Steam Generator Tube Failure (PWR),'' Revision 2, for evaluating SGTR accidents analyses. In addition, the staff uses the guidance from RG 1.195, ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light Water Nuclear Power Reactors,'' May 2003, for those licensees that chose to use its

guidance for dose consequence analyses using the TID 14844 source term.]

[For licensees using the alternative source term (AST) in their dose consequence analyses, the staff uses the regulatory guidance provided in NUREG–0800, SRP Section 15.0.1, ''Radiological Consequence Analyses Using Alternative Source Terms,'' Revision 0, July 2000, and the methodology and assumptions stated in Regulatory Guide (RG) 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors'', July 2000.]

The applicable dose criteria for the evaluation of DBAs depends on the source term incorporated in the dose consequence analyses. [For licensees using the TID 14844 source term, the maximum dose criteria to the whole body and the thyroid that an individual at the exclusion area boundary (EAB) can receive for the first 2 hours following an accident, and at the low population zone (LPZ) outer boundary for the duration of the radiological release, are specified in Title 10 of the Code of Federal Regulations (10 CFR) Part 100.11. These criteria are 25 roentgen equivalent man (rem) total whole body dose and 300 rem thyroid dose from iodine exposure. The accident dose criteria in 10 CFR 100.11 is supplemented by accident specific dose acceptance criteria in SRP 15.1.5, Appendix A, SRP 15.6.3 or Table 4 of RG 1.195, ''Methods and Assumptions for Evaluating Radiological Consequences of Design Basis Accidents at Light Water Nuclear Power Reactors,'' May 2003.]

[For control room dose consequence analyses that use the TID 14844 source term, the regulatory requirement for which the NRC staff bases its acceptance is General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50, ''Control Room''. GDC 19 requires that adequate radiation protection be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident. NUREG–0800, SRP Section 6.4, ''Control Room Habitability System,'' Revision 2, July 1981, provides guidelines defining the dose equivalency of 5 rem whole body as 30 rem for both the thyroid and skin dose. For licensees adopting the guidance from RG 1.196, ''Control Room Habitability at Light Water Nuclear Power Reactors,'' May 2003, Section C.4.5 of RG 1.195, May 2003, states that in lieu of the dose equivalency guidelines from Section 6.4 of NUREG–0800, the 10 CFR 20.1201 annual organ dose limit of 50 rem can be used for both the thyroid and skin dose equivalent of 5 rem whole body.]

[Licensees using the AST are evaluated against the dose criteria specified in 10 CFR Part 50.67. The off-site dose criteria are 25 rem total effective dose equivalent (TEDE) at the EAB for any 2-hour period following the onset of the postulated fission product release and 25 rem TEDE at the outer boundary of the LPZ for the duration of the postulated fission product release. In addition, 10 CFR Part 50.67 requires that adequate radiation protection be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem TEDE for the duration of the accident.]

3.0 TECHNICAL EVALUATION

3.1 Technical Evaluation of TSTF–490 RCS TS Changes

3.1.1 Revision to the Definition of DEI

The list of acceptable DCFs for use in the determination of DEI include the following:

- Table III of TID–14844, AEC, 1962, ''Calculation of Distance Factors for Power and Test Reactor Sites.''
- Table E–7 of Regulatory Guide 1.109, Revision 1, NRC, 1977.
- ICRP 30,1979, page 192–212, Table titled ''Committed Dose Equivalent in Target Organs or Tissues per Intake of Unit Activity.''
- Table 2.1 of EPA Federal Guidance Report No. 11, 1988, ''Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion.''

Note: It is incumbent on the licensee to ensure that the DCFs used in the determination of DEI are consistent with the applicable dose consequence analyses.

3.1.2 Deletion of the Definition of E-Bar and the Addition of a New Definition for DE Xe-133

The determination of DEX will be performed in a similar manner to that currently used in determining DEI, except that the calculation of DEX is based on the acute dose to the whole body and considers the noble gases Kr–85m, Kr–87, Kr–88, Xe–133m, Xe–133, Xe–135m, Xe–135, and Xe–138 which are significant in terms of contribution to whole body dose. Some noble gas isotopes are not included due to low concentration, short half life, or small dose conversion factor. The calculation of DEX would use either the average gamma disintegration energies for the nuclides or the effective dose conversion factors from Table III.1 of EPA Federal Guidance Report No.12, ''External Exposure to Radionuclides in Air, Water, and Soil'', 1993. Using this approach, the limit on the amount of noble gas activity in the primary coolant would not fluctuate with variations in the calculated values of E–Bar. If a specified noble gas nuclide is not detected, the new definition states that it should be assumed the nuclide is present at the minimum detectable activity. This will result in a conservative calculation of DEX.

When E–Bar is determined using a design basis approach in which it is assumed that 1.0% of the power is being generated by fuel rods having cladding defects and it is also assumed that there is no removal of fission gases from the letdown flow, the value of E–Bar is dominated by Xe–133. The other nuclides have relatively small contributions. However, during normal plant operation there are typically only a small amount of fuel clad defects and the radioactive nuclide inventory can become dominated by tritium and corrosion and or activation products, resulting in the determination of a value of E–Bar that is very different than would be calculated using the design basis approach. Because of this difference the accident dose analyses become disconnected from plant operation and the limiting condition for operation (LCO) becomes essentially meaningless. It also results in a TS limit that can vary during operation as different values for E–Bar are determined.

This change will implement a LCO that is consistent with the whole body radiological consequence analyses which are sensitive to the noble gas activity in the primary coolant but not to other, non-gaseous activity currently captured in the E–Bar definition. SR 3.4.16.1 specifies the limit for primary coolant gross specific activity as 100/E–Bar Ci/gm. The current E–Bar definition includes radioisotopes that decay by the emission of both gamma and beta radiation. The current Condition B of LCO 3.4.16 would rarely, if ever, be met for exceeding 100/E–Bar since the calculated value is very high (the denominator is very low) if beta emitters such as tritium (H–3) are included in the determination, as required by the E–Bar definition.

TS Section 1.1 definition for E—AVERAGE DISINTEGRATION ENERGY (E–Bar) is deleted and replaced with a new definition for DEX which states:

''DOSE EQUIVALENT XE–133 shall be that concentration of Xe–133 (microcuries per gram) that alone would produce the same acute dose to the whole body as the combined activities of noble gas nuclides Kr–85m, Kr–85, Kr–87, Kr–88, Xe–131m, Xe–133m, Xe–133, Xe–135m, Xe–135, and Xe–138 actually present. If a specific noble gas nuclide is not detected, it should be assumed to be present at the minimum detectable activity. The determination of DOSE EQUIVALENT XE–133 shall be performed using effective dose conversion factors for air submersion listed in Table III.1 of EPA Federal Guidance Report No. 12, or the average gamma disintegration energies as provided in ICRP Publication 38, ''Radionuclide Transformations'' or similar source.''

The change incorporating the newly defined quantity DEX is acceptable from a radiological dose perspective since it will result in an LCO that more closely relates the non-iodine RCS activity limits to the dose consequence analyses which form their bases. NOTE: IT IS INCUMBENT ON THE LICENSEE TO ENSURE THAT THE DCFS USED IN THE DETERMINATION OF DEI AND THE NEWLY DEFINED DEX ARE CONSISTENT WITH THE DCFS USED IN THE APPLICABLE DOSE CONSEQUENCE ANALYSIS.

3.1.3 Revision of LCO 3.4.16, ''RCS Specific Activity''

LCO 3.4.16 is modified to specify that iodine specific activity in terms of DEI and noble gas specific activity in terms of DEX shall be within limits. Currently the limiting indicators are not explicitly identified in the LCO, but are instead defined in current Condition C and Surveillance Requirement (SR) 3.4.16.1 for gross non-iodine specific activity and in current Condition A and SR 3.4.16.2 for iodine specific activity.

The new LCO states ''RCS DOSE EQUIVALENT I–131 and DOSE EQUIVALENT XE–133 specific activity shall be within limits.'' NOTE: IT IS INCUMBENT

ON THE LICENSEE TO ENSURE THAT THE SITE SPECIFIC LIMITS FOR BOTH DEI AND DEX ARE CONSISTENT WITH THE CURRENT SGTR AND MSLB RADIOLOGICAL CONSEQUENCE ANALYSES.

TS 3.4.16 Required Action A.1 is revised to remove the reference to Figure 3.4.16–1 ''Reactor Coolant DOSE EQUIVALENT I–131 Specific Activity Limit versus Percent of RATED THERMAL POWER'' and insert a limit of less than or equal to the site specific DEI spiking limit. Radiological dose consequence analyses for SGTR and MSLB accidents, which take into account the pre-accident iodine spike, do not consider the elevated RCS iodine specific activities permitted by Figure 3.4.16–1 for operation below 80% RTP. Instead, the pre-accident iodine spike analyses assume a DEI concentration 60 times higher than the corresponding long term equilibrium value, which corresponds to the specific activity limit associated with 100% RTP operation. TS 3.4.16 Required Action A.1 shall be based on the short term site specific DEI spiking limit to be consistent with the assumptions contained in the radiological consequence analyses.

3.1.4 TS 3.4.16 Applicability Revision

TS 3.4.16 Applicability is modified to include MODE 3 and MODE 4. It is necessary for the LCO to apply during MODES 1 through 4 to limit the potential radiological consequences of a SGTR or MSLB that may occur during these MODES. In MODES 5 and 6, the steam generators are not used for decay heat removal, the RCS and steam generators are depressurized, and primary to secondary leakage is minimal. Therefore, the monitoring of RCS specific activity during MODES 5 and 6 is not required. The change to modify the TS 3.4.16 Applicability to include all of MODE 3 and MODE 4 is necessary to limit the potential radiological consequences of an SGTR or MSLB that may occur during these MODES and is therefore acceptable from a radiological dose perspective.

3.1.5 TS 3.4.16 Condition A Revision

TS 3.4.16 Condition A is revised by replacing the DEI site specific limit ''> 1.0 μCi/gm'' with the words ''not within limit'' to be consistent with the revised TS 3.4.16 LCO format. The site specific DEI limit of ≤ [1.0] μCi/gm and Required Action A.1 is contained in SR 3.4.16.2. This change will maintain the consistency of the proposed TS and is acceptable from a radiological dose perspective.

3.1.6 TS 3.4.16 Condition B Revision to include Action for DEX Limit

TS 3.4.16 Condition C is replaced with a new Condition B for DEX not within limits. This change is made to be consistent with the change to the TS 3.4.16 LCO which requires the DEX specific activity to be within limits as discussed above. The DEX limit is site specific and the numerical value in units of μCi/gm is contained in revised SR 3.4.16.1. The site specific limit of DEX μCi/gm is established based on the maximum accident analysis RCS activity corresponding to 1% fuel clad defects with sufficient margin to accommodate the exclusion of those isotopes based on low concentration, short half life, or small dose conversion factors. The primary purpose of the TS 3.4.16 LCO on RCS specific activity and its associated Conditions is to support the dose analyses for DBAs. The whole body dose is primarily dependent on the noble gas activity, not the non-gaseous activity currently captured in the E–Bar definition.

The Completion Time for revised TS 3.4.16 Required Action B.1 will require restoration of DEX to within limit in 48 hours. This is consistent with the Completion Time for current Required Action A.2 for DEI. The radiological consequences for the SGTR and the MSLB accidents demonstrate that the calculated thyroid doses are generally a greater percentage of the applicable acceptance criteria than the calculated whole body doses (operation with iodine specific activity levels greater than the LCO limit is permissible, if the activity levels do not exceed the limits shown in Figure 3.4.16–1, in the applicable specification, for more than 48 hours). Therefore the Completion Time for noble gas activity being out of specification in the revised Required Action B.1 should be at least as great as the Completion Time for iodine specific activity being out of specification in current Required Action A.2. Therefore the Completion Time of 48 hours for revised Required Action B.1 is acceptable from a radiological dose perspective.

3.1.7 TS 3.4.16 Condition C Revision

TS 3.4.16 Condition C is revised to include Condition B (DEX not within limit) if the Required Action and associated Completion Time of Condition B is not met. This is consistent with the changes made to Condition B which now provides the same completion time for both components of RCS specific activity as discussed in the revision to Condition B. The revision to Condition C also replaces the limit on DEI from the deleted Figure 3.4.16–1 with a site specific value of > [60] μCi/gm. This change makes Condition C consistent with the changes made to TS 3.4.16 Required Action A.1.

The change to TS 3.4.16 Required Action C.1 requires the plant to be in MODE 3 within 6 hours and adds a new Required Action C.2 which requires the plant to be in MODE 5 within 36 hours. These changes are consistent with the changes made to the TS 3.4.16 Applicability. The revised LCO is applicable throughout all of MODES 1 through 4 to limit the potential radiological consequences of an SGTR or MSLB that may occur during these MODES. In MODES 5 and 6, the steam generators are not used for decay heat removal, the RCS and steam generators are depressurized, and primary to secondary leakage is minimal. Therefore, the monitoring of RCS specific activity during MODES 5 and 6 is not required.

A new TS 3.4.16 Required Action C.2 Completion Time of 36 hours is added for the plant to reach MODE 5. This Completion Time is reasonable, based on operating experience, to reach MODE 5 from full power conditions in an orderly manner and without challenging plant systems and the value of 36 hours is consistent with other TS which have a Completion Time to reach MODE 5.

3.1.8 SR 3.4.16.1 Revision to include Surveillance for DEX

The change replaces the current SR 3.4.16.1 surveillance for RCS gross specific activity with a surveillance to verify that the site specific reactor coolant DEX specific activity is ≤ [280] μCi/gm. This change provides a surveillance for the new LCO limit added to TS 3.4.16 for DEX. The revised SR 3.4.16.1 surveillance requires performing a gamma isotopic analysis as a measure of the noble gas specific activity of the reactor coolant at least once every 7 days which is the same frequency required under the current SR 3.4.16.1 surveillance for RCS gross non-iodine specific activity. The surveillance provides an indication of any increase in the noble gas specific activity. The results of the surveillance on DEX allow proper remedial action to be taken before reaching the LCO limit under normal operating conditions.

SR 3.4.16.1 is modified by inclusion of a NOTE which permits the use of the provisions of LCO 3.0.4.c. This allowance permits entry into the applicable MODE(S) while relying on the ACTIONS. This allowance is acceptable due to the significant conservatism incorporated into the specific activity limit, the low probability of an event which is limiting due to exceeding this limit, and the ability to restore transient specific activity excursions while the plant remains at, or proceeds to power operation. This allows entry into MODE 4, MODE 3, and MODE 2 prior to performing the surveillance. This allows the surveillance to be performed in any of those MODES, prior to entering MODE 1, similar to the current surveillance SR 3.4.16.2 for DEI.

3.1.9 SR 3.4.16.3 Deletion

The current SR 3.4.16.3 which required the determination of E–Bar is deleted. TS 3.4.16 LCO on RCS specific activity supports the dose analyses for DBAs, in which the whole body dose is primarily dependent on the noble gas concentration, not the non-gaseous activity currently captured in the E–Bar definition. With the elimination of the limit for RCS gross specific activity and the addition of the new LCO limit for noble gas specific activity, this SR to determine E–Bar is no longer required.

3.2 Precedent

The Technical Specifications developed for the Westinghouse AP600 and AP1000 advanced reactor designs incorporate an LCO for RCS DEX activity in place of the LCO on non-iodine gross specific activity based on E–Bar. This approach was approved by the NRC for the AP600 in NUREG–1512, ''Final Safety Evaluation Report Related to the Certification of the AP600 Standard Design, Docket No. 52–003,'' dated August 1998 and for the AP1000 in the NRC letter to Westinghouse Electric Company dated September 13, 2004. In addition the curve describing the maximum allowable iodine concentration during the 48-hour period of elevated activity as a function of power level, was not included in the TS approved for the AP600 and AP1000 advanced reactor designs.

4.0 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].

5.0 ENVIRONMENTAL CONSIDERATION

The amendment[s] change[s] 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 or surveillance requirements. The NRC staff has determined that the amendment involves 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 amendment involves no significant hazards consideration and there has been no public comment on such finding published [DATE] ([ ] FR [ ]). Accordingly, the amendment meets 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 amendment.

6.0 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 amendment will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: [LICENSEE] requests adoption of an approved change to the standard technical specifications (STS) for Pressurized Water Reactor (PWR) Plants [NUREG–1430, NUREG–1431, or NUREG–1432] and the [LICENSEE] technical specifications (TS), to replace the current limits on primary coolant gross specific activity with limits on primary coolant noble gas activity. The noble gas activity would be based on DOSE EQUIVALENT XE–133 and would take into account only the noble gas activity in the primary coolant. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–490.

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

Reactor coolant specific activity is not an initiator for any accident previously evaluated. The Completion Time when primary coolant gross activity is not within limit is not an initiator for any accident previously evaluated. The current variable limit on primary coolant iodine concentration is not an initiator to any accident previously evaluated. As a result, the proposed change does not significantly increase the probability of an accident. The proposed change will limit primary coolant noble gases to concentrations consistent with the accident analyses. The proposed change to the Completion Time has no impact on the consequences of any design basis accident since the consequences of an accident during the extended Completion Time are the same as the consequences of an accident during the Completion Time. As a result, the consequences of any accident previously evaluated are not significantly increased.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change in specific activity limits does not alter any physical part of the plant nor does it affect any plant operating parameter. The change does not create the potential for a new or different kind of accident from any previously calculated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change revises the limits on noble gase radioactivity in the primary coolant. The proposed change is consistent with the assumptions in the safety analyses and will ensure the monitored values protect the initial assumptions in the safety analyses.

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 ____day of _____, XXXX.

For The Nuclear Regulatory Commission

Project Manager, Plant Licensing Branch [ ], Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation

Enclosure 2—[Proposed Technical Specification Changes and Technical Specification Bases Changes]

Enclosure 3—[Final Technical Specification and Bases Pages]

[FR Doc. 06–9330 Filed 11–17–06; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that OPIC is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): OPIC 2006 Client Satisfaction Survey. Before submitting the ICR to OMB for review and approval, OPIC is soliciting public comment on the client survey. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden. The proposed ICR is summarized below.

DATES: All comments must be received by OPIC within 60 calendar days from the publication date of this Notice.

ADDRESSES: Information regarding this information collection request and/or a copy of the survey questions can be obtained from the Agency Submitting Officer below. Comments on the survey should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Essie Bryant, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, telephone (202) 336–8563.

SUPPLEMENTARY INFORMATION:

Type of Request: New information collection.

Title: 2006 OPIC Client Satisfaction Survey.

OMB Approval Number: None.

Frequency of Response: Once per client.

Type of Respondents: Individual business officer representatives of U.S. companies sponsoring projects overseas.

Respondent's Obligation: Voluntary.

Affected Public: U.S. companies or citizens sponsoring projects overseas.

Estimated Number of Respondents: 100.

Estimated time Per Response: 30 minutes.

Estimated Total Annual Burden: $0.

Authority for Information Collection: Sections 231 and 234 of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses of Information Collected): OPIC is

conducting a telephone survey of its clients to determine their satisfaction with its products and services. OPIC will use the survey results to develop strategies to improve customer service. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of OPIC, including whether the information collected will have practical utility; (2) the accuracy of OPIC'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 automated collection techniques or the use of other forms of information technology.

Signature Date: November 8, 2006.

Dev Jagadesen,

Deputy General Counsel, Department of Legal Affairs.

[FR Doc. 06–9275 Filed 11–17–06; 8:45 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submissions for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions: Schedule 14D–1F, OMB Control No. 3235–0376, SEC File No. 270–338. Schedule 14D–9F, OMB Control No. 3235–0382, SEC File No. 270–339.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget these requests for extension of the previously approved collections of information discussed below.

Schedule 14D–1F (17 CFR 240.14d–102) may be used by any person making a cash tender or exchange offer for securities of any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40% of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in securities of Canadian issuers. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Schedule 14D–1F takes approximately 2 hours per response to prepare and is filed by 5 respondents annually for a total reporting burden of 10 hours.

Schedule 14D–9F (17 CFR 240.14d–103) is used by any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D–1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Schedule 14D–9F takes approximately 2 hours per response to prepare and is filed by 5 respondents annually for a total reporting burden of 10 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 13, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–19520 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54741; File No. SR–Amex–2006–106]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of a Penny Quoting Pilot Program

November 9, 2006.

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 November 9, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. 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 Exchange is proposing to adopt a six month pilot program (the ''Penny Quoting Pilot Program'') to quote a limited number of options classes in a minimum price variation (''MPV'') of $0.01.

The text of the proposed rule change, including Exhibit 2 (a draft Regulatory Circular, which sets forth the list of the options classes that will be subject to the proposed Penny Quoting Pilot Program) to the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, at the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 7, 2006, Commission Chairman Cox submitted a letter (the ''June 7th Letter'') to each options exchange supporting the introduction and implementation of a pilot program for the quoting of a limited number of options classes in pennies ($0.01 MPV). The Exchange, after meaningful discussion with the Commission staff, submits this proposed rule change for the purpose of adopting the Penny Quoting Pilot Program.

Options classes are currently quoted in MPVs in nickels ($0.05) and dimes ($0.10). Amex Rule 952 provides that the MPV for an option on a stock or ETF share is as follows: (i) For option issues quoted under $3 a contract, $0.05 MPV; and (ii) for option issues quoted at $3 a contract or greater, $0.10 MPV. As set forth in the June 7th Letter, quoting in penny increments ($0.01 MPV) is expected to benefit investors by allowing options quotes to be expressed at better prices and options orders to be executed at the best possible price. Furthermore, the Exchange submits that quoting in pennies would further enhance competition among the option exchanges.

Proposed Penny Quoting Pilot Program

Selection of the Options Classes. The proposed Penny Quoting Pilot Program will initially consist of thirteen (13) options classes. Exhibit 2 to the proposed rule change is a draft Regulatory Circular which sets forth the list of the options classes that will be subject to the proposed Penny Quoting Pilot Program.

Minimum Price Variations (MPVs). The quoting requirements in connection with the Penny Quoting Pilot Program will be as follows:

- MPVs of $0.01 for options with premiums of up to $3
- MPVs of $0.05 for options with premiums of $3 or greater except for the QQQQ options which will trade at an MPV of $0.01 for all premiums.

Because quoting options in pennies will increase quote message traffic, which may overwhelm certain data systems of the options exchanges, market data vendors and securities firms, quoting options in pennies will begin in a limited number of options classes. The Exchange believes that the proposed introduction of a limited number of options classes that may quote in pennies under the Penny Quoting Pilot Program is reasonable given the system capacity constraints and concerns that exist industry-wide. The Amex believes that once experience has been gained from the proposed Penny Quoting Pilot Program, the Commission and the industry will be better able to assess the impact on market quality and systems capacity.

The Commission's Office of Economic Analysis (''OEA'') and each participating options exchange will perform individual analysis of the initial pilot program options classes after a three (3) month interval (the ''Pilot Report''). The Pilot Report will be submitted to the Commission within thirty (30) days of the end of such three (3) month time period. The Pilot Report will compare quotation and trading activity in the three (3) months prior to the Penny Quoting Pilot Program to the first three (3) months of the Penny Quoting Pilot Program as follows: (1) Quotation spread, quotation size, average daily volume and other relevant factors; (2) the number of quotations in the Penny Quoting Pilot Program and the effect on Amex system's capacity; and (3) an assessment of trade-throughs and how they were addressed. The Exchange expects that the Pilot Report will be the subject of further discussions regarding status and next steps for the industry.

Quote Mitigation Strategy

As a condition to participation in the Penny Quoting Pilot Program, the Commission expects that each options exchange provide a rational quote mitigation strategy because of the concerns regarding system capacity. The Amex has in place several quote mitigation mechanisms and continues to evaluate its need for enhanced system capacity and management. The Exchange believes that its current quote mitigation strategies are effective as set forth below.

- *Join Quote.* The Amex, through the ANTE system,[3] provides that registered options traders (''ROTs'') may either stream their own quotes or join the specialist's disseminated quotation in some or all of his assigned classes or series (''join quote''). In order to participate in ''join quote,'' a ROT must be physically present in the trading crowd. The purpose of allowing ROTs to piggyback on specialists' quotes is partly to reduce market data traffic by allowing ROTs to join the specialist's quote in the less actively traded series (far out months, etc.) while auto-quoting the more actively traded series.
- *Monitoring.* The Amex actively monitors the quotation activity of its market participants. When the Exchange detects that a market participant is disseminating significantly more quotes than the average market participant, the Exchange contacts the market participant and alerts them to potentially excessive quotation activity. Often such monitoring reveals that the market participant may have internal system issues or has incorrectly set system parameters. Alerting the market participant usually leads to the market participant to take steps to reduce the number of quotes for dissemination.
- *Holdback Timers.* The Amex has the systematic ability to limit the dissemination of quotations and other changes to the Amex Best Bid or Offer (''ABBO'') according to prescribed time criteria (''Holdback Timer''). For instance, if there is a change in the price of a security underlying an option, multiple market participants may adjust the price or size of their quotes. Rather than disseminating each individual change, the Holdback Timer permits the Exchange to wait until multiple market participants have adjusted their quotes and then to disseminate a new quotation. This helps to prevent the ''flickering'' of quotations. The Amex proposes to codify the Holdback Timer in this rule filing. As proposed in Amex Rule 958A—ANTE, the Exchange will utilize a Holdback Timer that delays quotation updates for no longer than one (1) second.
- *Delisting.* The Amex commits to the Commission that it will delist options with an average daily volume (''ADV'') of less than 25 contracts. However, it has been the policy of the Amex to be much more aggressive in delisting relatively inactive options, thereby eliminating the quotation traffic attendant to such listings.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[3] *See* Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004) (SR–Amex–2003–89).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 No. SR–Amex–2006–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Amex–2006–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at *http://www.sec.gov/rules/sro.shtml.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2006–106 and should be submitted on or before December 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19512 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54738; File No. SR–CBOE–2006–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Increase the Class Quoting Limit in the Option Class Research in Motion

November 9, 2006.

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 November 8, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to increase the class quoting limit in the option class Research in Motion (RIMM). The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes class quoting limits (''CQLs'') for each class traded on the Hybrid Trading System.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and the current levels are established from 25–40, depending on the trading activity of the particular product.

CBOE Rule 8.3A, Interpretation .01(c) provides a procedure by which the President of the Exchange may increase the CQL for a particular product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule to include '' * * * substantial trading volume, whether actual or expected.''[6] The effect of an increase in

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* CBOE Rule 8.3A.01.

[6] ''Any actions taken by the President of the Exchange pursuant to this paragraph will be

the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL in the option class Research in Motion (RIMM) from its current limit of 40 to 42.

RIMM is one of the most active equity option classes traded on the Exchange, and consistently ranks among the top classes in national average daily trading volume. Increasing the CQL in RIMM options will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither received nor solicited written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder,[10] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–CBOE–2006–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2006–91 and should be submitted on or before December 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19518 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act.'' CBOE Rule 8.3A.01(c).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54742; File No. SR–NASD–2006–122]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASD Members Using ITS/CAES, Brut, and Inet

November 13, 2006.

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 November 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using the ITS/CAES System and the Brut and Inet facilities (collectively, the ''Nasdaq Facilities''). Nasdaq states that it will implement this rule change on November 1, 2006. As indicated in the rule text, portions of the rule change would be in effect on a pilot basis, beginning November 1, 2006 and continuing through November 30, 2006.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].[5]

7010. System Services

(a)–(h) No change.

(i) ITS/CAES System, Brut, and Inet Order Execution and Routing

(1) The following charges shall apply to the use of the order execution and routing services of the ITS/CAES System, Brut, and Inet (the ''Nasdaq Facilities'') by members for all Exchange-Traded Funds that are not listed on The NASDAQ Stock Market LLC. The term ''Exchange-Traded Funds'' shall mean Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts as such terms are defined in Rule 4420(i), (j), and (l), respectively, of The NASDAQ Stock Market LLC. For purposes of determining a member's volume in all securities under Rule 7010(i), the term ''Nasdaq Facilities'' shall also be deemed to include the member's volume in Nasdaq-listed securities through the facilities of The NASDAQ Stock Market LLC.

ORDER EXECUTION

Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the Nasdaq Facilities:	
Charge to member entering order:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) more than 30 million shares of liquidity provided, and (ii) more than 50 million shares of liquidity accessed and/or routed; or members with an average daily volume through the Nasdaq Facilities in all securities during the month of (i) More than 20 million shares of liquidity provided, and (ii) more than 60 million shares of liquidity accessed and/or routed.	$0.0028 per share executed (or, in the case of executions against Quotes/Orders at less than $1.00 per share, 0.1% of the total transaction cost).
Other members	$0.0030 per share executed (or, in the case of executions against Quotes/Orders at less than $1.00 per share, 0.1% of the total transaction cost).
Credit to member providing liquidity:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 30 million shares of liquidity provided.	$0.0025 per share executed (or $0, in the case of executions against Quotes/Orders at less than $1.00 per share).
Other members	$0.0020 per share executed (or $0, in the case of executions against Quotes/Orders at less than $1.00 per share).
Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the Nasdaq Facilities:	
Charge to member entering order:	
Members with an average daily volume through the Nasdaq Facilities in all securities during the month of more than 500,000 shares of liquidity provided.	$0.001 per share executed (but no more than $10,000 per month).
Other members	$0.001 per share executed.

ORDER ROUTING FOR EXCHANGE-TRADED FUNDS NOT LISTED ON NASDAQ

Order routed to the New York Stock Exchange (''NYSE'') [through its DOT system].	See [DOT] *NYSE* fee schedule in Rule 7010(i)(7).
[Any other order entered by a member that is routed outside of the Nasdaq Facilities and that does not attempt to execute in the Nasdaq Facilities prior to routing].	[$0.004 per share executed].
Order routed to the American Stock Exchange (''Amex'') [after attempting to execute in the Nasdaq Facilities].	$0.003 per share executed (plus, in the case of orders charged a fee by the Amex specialist, $0.01 per share executed).
[Order routed through the Intermarket Trading System (''ITS'') to NYSE Arca after attempting to execute in the Nasdaq Facilities].	[$0.0028 per share executed].
[Any other order routed through the Intermarket Trading System (''ITS'') after attempting to execute in the Nasdaq Facilities].	[$0.0007 per share executed].
[Any]*All* other order*s* [routed after attempting to execute in the Nasdaq Facilities].	$0.003 per share executed.

(2)–(5) No change.

(6) Except as provided in paragraph (7), the following charges shall apply to the use of the order execution and routing services of the Nasdaq Facilities by members for securities subject to the Consolidated Quotations Service and Consolidated Tape Association plans other than Exchange-Traded Funds (''Covered Securities''):

[5] Nasdaq states that changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com*, as further amended on an immediately effective basis by File No. SR–NASD–2006–116. *See* Securities Exchange Act Release No. 54695 (November 2, 2006), 71 FR 65862 (November 9, 2006).

ORDER EXECUTION

Order that accesses the Quote/Order of a Nasdaq Facility market participant:	
Charge to member entering order:	[$0.0007 per share executed]
On or after December 1, 2006	*$0.0007 per share executed.*
For a pilot period during the month of November 2006:	
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of (i) more than 100,000 shares of liquidity provided, and (ii) more than 100,000 shares of liquidity accessed and/or routed.	*$0.0007 per share executed.*
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of (i) between 50,000 and 100,000 shares of liquidity provided, and (ii) between 50,000 and 100,000 shares of liquidity accessed and/or routed.	*$0.001 per share executed.*
Other members	*$0.0015 per share executed.*
Credit to member providing liquidity for a Covered Security listed on NYSE and The NASDAQ Stock Market LLC:	*$0.0007 per share executed.*
Credit to a member providing liquidity for other Covered Securities:	
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of more than 5 million shares of liquidity accessed, provided, or routed.	$0.0005 per share executed.
Members with an average daily volume through the Nasdaq Facilities in Covered Securities during the month of 10 million or more shares of liquidity provided.	$0.0006 per share executed.
Other members	No credit.

ORDER ROUTING

Order routed to Amex	$[0.003]*$0.0028* per share executed (plus, in the case of orders charged a fee by the Amex specialist, $0.01 per share executed).
Order routed to NYSE	See [DOT] *NYSE* fee schedule in Rule 7010(i)(7).
[Order routed to NYSE Arca] *All other orders*	$0.0028 per share executed.
[Order for NYSE-listed Covered Security routed to venue other than the NYSE, Amex, or NYSE Arca].	[$0.001 per share executed]
[Order for Covered Security listed on venue other than the NYSE and routed to venue other than Amex, NYSE, or NYSE Arca].	[$0.003 per share executed]
[Order routed through the ITS to NYSE Arca]	[$0.0028 per share executed]
[Any other order routed through the ITS]	[$0.0007 per share executed]

(7) The following charges shall apply to the use of the Nasdaq Facilities by members for routing to the NYSE [through its DOT system] for all securities, including Exchange-Traded Funds:

Order charged a fee by the NYSE specialist	$0.01 per share executed.
Order that attempts to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist *or that is routed to NYSE via ITS*.	$0.0002 per share executed (but no more than $[60,000] *25,000* per month).
Order that does not attempt to execute in the Nasdaq Facilities prior to routing and that is not charged a fee by the NYSE specialist.	$0.0003 per share executed (but no more than $[100,000] *75,000* per month).

(8) No change.

(j)–(v) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing several changes to its price schedule for routing and execution of orders in non-Nasdaq exchange-listed securities. The changes are in response to fees being imposed by other trading venues on orders routed directly through Nasdaq Execution Services, LLC (Nasdaq's broker-dealer subsidiary) and through the Intermarket Trading System (''ITS''). Several markets, including NYSE Arca, the Boston Stock Exchange, the National Stock Exchange, and the Chicago Stock Exchange, have announced or begun to impose fees of approximately $0.003 per share for orders routed to them.

These fee changes have created a pricing structure for trading securities listed on the New York Stock Exchange (''NYSE'') that is in a state of flux, characterized by dramatic differences in fees for effectively the same services. For example, the markets listed above charge 28 or 30 cents per 100 shares for accessing liquidity, while the NYSE charges 2.5 cents per 100 shares (less if the firm's total fees reach a $750,000 per month cap), and Nasdaq currently charges 7 cents per 100 shares. Furthermore, while several markets rebate approximately 20 cents per 100 shares for providing liquidity, Nasdaq either provides no rebate, or rebates only 5 or 6 cents per 100 shares; the NYSE, by contrast, charges 2.5 cents per

100 shares. Nasdaq believes that the market will find an equilibrium pricing structure, because the disparities listed above are unstable due to the interconnectivity of the market. In order to transition to a more stable fee structure, Nasdaq is proposing several fee changes. These changes should be viewed in light of the dramatic disparities in pricing listed above.

For orders in non-Nasdaq-listed exchange-traded funds (''ETFs'') routed to venues other than the NYSE, Nasdaq is proposing to eliminate current specific fees for orders routed through ITS or that route without checking the books of the Nasdaq Facilities, and is instituting a flat fee of $0.003 per share executed (plus $0.01 per share in the case of orders charged a fee by an American Stock Exchange (''Amex'') specialist). Thus, fees would be reduced for orders that do not attempt to execute prior to routing, would be increased for orders routed through ITS, and would remain unchanged for all other routed ETF orders.

For orders in non-Nasdaq-listed securities other than ETFs that are routed to venues other than the NYSE, Nasdaq is proposing to eliminate current specific fees that differentiate among orders based on a security's listing market and/or the order's destination market and instituting a flat fee of $0.0028 per share executed (plus $0.01 per share in the case of orders charged a fee by an Amex specialist). As a result, fees would remain unchanged for orders routed to NYSE Arca, would decrease slightly for orders routed to Amex and for orders in non-NYSE-listed securities routed to regional exchanges or ECNs, and would increase for orders in NYSE-listed securities routed to regional exchanges or ECNs and for orders routed through ITS.

For orders in all securities routed to the NYSE for execution, Nasdaq is proposing to institute a decrease (from $0.0007 to $0.0002 per share executed) for orders routed through the ITS, and would apply to these charges the same monthly fee cap that applies to orders routed through NYSE's DOT system after checking the books of the Nasdaq Facilities. Moreover, Nasdaq would reduce this monthly cap from $60,000 to $25,000. Nasdaq is also reducing the monthly fee cap for DOT orders that do not check the Nasdaq Facilities' books, from $100,000 to $75,000.

Finally, to encourage firms to utilize Nasdaq in non-Nasdaq-listed securities, Nasdaq is proposing to introduce a higher pricing tier of $0.0015 per share executed for members to access liquidity when those members provide an average of less than 50,000 shares of liquidity per day and access and/or route an average of less than 50,000 shares of liquidity per day in non-Nasdaq securities through the Nasdaq Facilities during the month. In addition, Nasdaq is introducing an intermediate pricing tier of $0.001 per share executed for members to access liquidity when those members provide an average of between 50,000 shares and 100,000 shares of liquidity per day and access and/or route an average of between 50,000 shares and 100,000 shares of liquidity per day.[6] Because this change is made on a pilot basis, Nasdaq states that it will the review affect of the price change and determine whether to submit an additional filing regarding these fees by December 1, 2006.

Although the Nasdaq Facilities have enjoyed substantial growth in the share of non-Nasdaq-listed stocks that they executed over the past year, many members that use the Nasdaq Facilities still do so only on a minimal basis. In fact, if the new fees had been in place in September 2006, a higher rate would have applied to over 84% of the firms trading non-Nasdaq securities through the Nasdaq Facilities. By setting the thresholds for lower rates at the modest levels of 50,000 and 100,000 shares per day, Nasdaq hopes to encourage all of these firms to rethink their routing and quoting practices, in lieu of reflexively sending their orders to just one market. Nasdaq believes that incentives aimed at encouraging a modest level of use by a broader number of members would further enhance the quality of Nasdaq markets for trading these securities.

Nasdaq believes that the fee would result in overall monthly fees and rebates with respect to accessing and providing liquidity through Nasdaq that are significantly lower than fees and rebates on other venues. For example, a market participant providing no liquidity would pay $0.0015 per share accessed and receive no rebate; under pricing recently introduced by NYSE Arca, a market participant providing no liquidity would pay twice as much—$0.003 per share accessed—and receive no rebate.

Although the absence of liquidity provider credits on the NYSE itself makes comparison more difficult, it should be noted that recent fee increases by that venue clearly had a disparate impact on Nasdaq Execution Services and other market participants that do not charge customers high commissions—in the case of Nasdaq Execution Services, increasing monthly charges to route orders to the NYSE from an average of $3,620 per month during the six months prior to the fee increase to $750,000 per month, an increase of 20,600 percent. In addition, Nasdaq and others routing orders to the NYSE must often pay unfiled specialist charges of $0.01 per share for many orders that they route to the NYSE. Nevertheless, the NYSE's filed rate for transactions of $0.00025 per share executed, coupled with its new monthly fee cap of $750,000 per month, results in dramatically lower average execution fees for large participants in its market. For example, a firm with an average daily volume of 300 million shares per day during October 2006 would pay an average per share charge of $0.000114, less than half the per share rate paid by firms not reaching the cap. In contrast to the NYSE's steep discount, however, which serves simply to reduce the relative fees of its largest customers, Nasdaq's change is designed specifically to encourage use of the Nasdaq system that enhances market quality and thereby benefits investors choosing to enter orders into Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq states that the proposed rule change would put lower caps on fees to route orders to the NYSE, thereby reducing charges to members that make substantial use of Nasdaq's routing facilities. Nasdaq states that the proposal also imposes more uniform charges for routing to other venues. Finally, Nasdaq states that the proposed change introduces a higher fee for accessing Nasdaq Facility liquidity in cases where a market participant's use of the Nasdaq Facilities does not meet certain minimal thresholds. Nasdaq believes that this change is consistent with an equitable allocation of fees because lower overall fees are charged

[6] Nasdaq would continue to charge $0.0007 per share executed for all other members to access liquidity (*i.e.,* when those members provide an average of more than 100,000 shares of liquidity per day and access and/or route an average of more than 100,000 shares of liquidity per day). Telephone conversation among John Yetter, Senior Associate General Counsel, Nasdaq, David Liu, Special Counsel, Division of Market Regulation (''Division''), Commission, and Theodore Venuti, Attorney, Division, Commission, on November 8, 2006.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

to market participant that enhance market quality by providing liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, Nasdaq does not believe that the proposed change to fees to access liquidity in non-Nasdaq securities through the Nasdaq Facilities would impose a burden on competition by other markets that route orders to the Nasdaq Facilities for execution. First, as discussed in greater detail above, Nasdaq's fees applicable to members accessing substantially more liquidity than they provide are one-half of NYSE Arca's, while NYSE Arca provides greater rebates to liquidity providers. Thus, to the extent that NYSE Arca, for example, routes only marketable orders to Nasdaq, it would receive more beneficial pricing than it offers under similar circumstances. Second, it should be noted that status as an execution venue does not equate to acting solely as a liquidity accessor with respect to other markets. Through its Nasdaq Execution Services broker-dealer, Nasdaq provides substantial liquidity on the floor of the NYSE, because Nasdaq views this as a valuable service that can be offered to its members. Thus, if the NYSE had a comparable fee structure in place, Nasdaq would easily qualify for a reduced rate when accessing liquidity at that venue. Finally, the change is broad in its application, in that it currently would apply to over 84% of firms trading non-Nasdaq securities through the Nasdaq Facilities, all of which are equally eligible to increase their use of the Nasdaq Facilities in Nasdaq in order to qualify for more favorable pricing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 thereunder [10] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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 No. SR–NASD–2006–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASD–2006–122. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 NASD. 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 No. SR–NASD–2006–122 and should be submitted on or before December 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19516 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54715A; File No. SR–NASD–2006–108]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change Relating to an NASD Trade Reporting Facility Established in Conjunction With the National Stock Exchange, Inc.; Corrrection

November 14, 2006.

In FR Doc. No. E6–19167, beginning on page 66354 for Tuesday, November 14, 2006, the last sentence in part IV on page 66359 contained an error. The sentence refers incorrectly to Section 6(b)(5) of the Act rather than Section 15A(b)(6) of the Act. Accordingly, the sentence should be revised to read as follows:

''Accordingly, the Commission finds that it is consistent with Sections 15A(b)(6) and 19(b) of the Act to approve Amendment No. 1 on an accelerated basis.''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19537 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54740; File No. SR–NASD–2006–073]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval To Amendment No. 2 To Amend NASD Interpretive Material 2210–4 To Require Certain Member Firms to Provide a Hyperlink to the NASD's Internet Home Page

November 9, 2006.

I. Introduction

On June 8, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend NASD Interpretive Material 2210–4 to require certain member firms to provide a hyperlink to the NASD's internet home page. NASD filed Amendment No. 1 to the proposed rule change on June 26, 2006.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 6, 2006.[4] The Commission received three comments on the proposal, as amended.[5] On August 30, 2006, the NASD filed Amendment No. 2 to amend the filing and respond to the comment letters. This order grants accelerated approval of the proposed rule change, as amended by Amendment No. 2 and solicits comments from interested persons on Amendment No. 2.

II. Description of Proposed Rule Change

NASD proposes to amend NASD Interpretive Material (''IM'') 2210–4 to require a member firm or a person associated with a member firm that refers, on its Internet Web site, to the firm's membership in NASD to provide a hyperlink to NASD's Web site. According to the NASD, many broker-dealers refer to their membership in NASD on their internet Web sites, often in a description of the firm or in an ''about us'' section. The proposed rule change would require a firm, when referencing NASD membership on its Web site, to include an accompanying hyperlink to NASD's internet home page. The proposed rule change also would apply to an internet Web site relating to a firm's investment banking or securities business that is maintained by or on behalf of any person associated with the firm.[6] The proposed rule change would not create an independent obligation for a firm (or persons associated with a firm where applicable) to state that the firm is an NASD member on its internet Web site. The proposed rule change would apply only to the extent that a firm or a person associated with a firm chooses to represent on its Web site that the firm is a member of NASD.[7]

III. Summary of Comments and NASD Response

The Commission received three comment letters on the proposed rule change: two were generally in favor of the proposal in its current form; one stated the requirement constitutes ''overkill.'' [8] Specifically, one commenter stated that the failure to define the term ''most prominent'' is likely to lead to differing interpretations and confusion.[9] A second commenter requested clarification regarding the extent of the requirement to include a hyperlink to the NASD's Internet home page.[10] They suggested that the language of the SIPC standard be used in the NASD interpretation in order to avoid confusion.[11] The commenter also expressed concern over the effective date for compliance, requesting that the time frame for compliance be increased from 180 days to 360 days due to the tremendous number of active Web sites that will be affected by this requirement.[12]

In Amendment No. 2, NASD responded to the concerns raised by the commenters and amended the rule text. In response to the FSI Letter regarding the definition of the term ''most prominent,'' NASD removed the requirement to place the hyperlink at the ''most prominent indication of NASD membership.'' Instead, members will be allowed to place the hyperlink at any reference that is reasonably designed to draw the public's attention to NASD membership. With this change, NASD clarified that a firm subject to the proposed rule would be able to choose where to place a hyperlink to NASD's Web site, provided that the hyperlink is in close proximity to a reference to NASD membership that is reasonably designed to draw the public's attention to the fact that the firm is a member of NASD.

In response to the NPH Letter, NASD explained that ''a legend that denotes that a firm is a member of NASD, would impose an obligation to provide a hyperlink.'' That stated, the NASD reaffirmed that a firm would only need to provide one hyperlink on its Web site.[13] Additionally, in response to the request in the NPH Letter for more time to implement the proposed rule change, the NASD stated that based on feedback it received from several member committees, the 180 days should provide sufficient time for implementation of the proposed rule change.

Finally, in response to the Lincoln Letter, NASD stated that the commenter appears to have misunderstood the requirements of the proposed rule change as a member would not be required to provide more than one hyperlink to the NASD's Web site.[14]

IV. Discussion and Commission Findings

The Commission has reviewed the proposed rule change, comment letters, and NASD's response and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[15] In particular, the Commission finds the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original rule filing in its entirety.

[4] *See* Securities Exchange Act Release No. 54058 (June 28, 2006), 71 FR 38439 (SR–NASD–2006–073)(''Notice'').

[5] *See* letters to Nancy M. Morris, Secretary, Commission, from Dale Brown, CEO, Financial Services Institute, dated July 27, 2006 (''FSI Letter'') and from Aimee Blinder, Vice President, Compliance, National Planning Holdings, Inc., dated July 27, 2006 (''NPH Letter''). *See* letter filed via the Commission's Web Comment Form, from Phyllis Hawkins, Compliance Advisor, Lincoln Investment Planning, Inc., dated July 27, 2006 (''Lincoln Letter'').

[6] This requirement is intended to capture, among other things, situations where a person associated with an NASD member firm maintains his own internet Web site or ''home page'' that relates to a member's investment banking or securities business. For example, NASD understands that independent contractors or their firms sometimes maintain a separate home page for each independent contractor for marketing purposes.

[7] The proposed rule change is similar to a rule adopted by the Securities Investor Protection Corporation (''SIPC''), which requires that its members provide a live hyperlink to SIPC's Web site, *http://www.SIPC.org*, when referring to membership in SIPC. *See* Article 11, Section 4 of SIPC Bylaws.

[8] *See* Lincoln letter.

[9] *See* FSI letter.

[10] *See* NPH letter.

[11] *Id.*

[12] *Id.*

[13] NASD stated that the hyperlink requirement would not apply to references to NASD membership in disclosure documents or other offering documents linked to the member firm's Web site.

[14] *See* footnote 5 in the Notice, *supra* note 4.

[15] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

change, as amended, is consistent with Section 15A of the Act.[16] Specifically, the Commission finds the proposal to be consistent with the provisions of Sections 15A(b)(6) of the Act,[17] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the modifications to the proposed rule change that NASD made in response to issues raised by commenters should provide sufficient guidance to allow members to satisfy the requirements of the rule. Moreover, the Commission believes that facilitating investor access to NASD's Web site should lead to better educated and informed investors.

V. Solicitation of Comments Concerning Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 to 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–NASD–2006–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–073. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2006–073 and should be submitted on or before December 11, 2006.

VI. Accelerated Approval of Filing as Amended by Amendment No. 2

The Commission finds good cause for approving the filing, as modified by Amendment No. 2 to the proposed rule change, on an accelerated basis. Amendment No. 2 modifies the proposal in response to issues raised by the commenters. Because Amendment No. 2 raises no novel issues, and provides improvements to the proposed rule change in direct response to issues raised by the commenters, the Commission finds good cause for approving Amendment No. 2 before the 30th day after its publication in the **Federal Register**.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–2006–073), as amended by Amendment No. 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19546 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78*o*–3.

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54737; File No. SR–NSCC–2006–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Clarifying and Technical Changes to NSCC's Rules Regarding ACATS Fund/SERV

November 9, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 29, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would make clarifying and technical changes to NSCC's Rules principally as they relate to funds which are eligible for processing on Fund/Serv, NSCC's mutual fund processing system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified the text of the summaries prepared by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make a technical clarification to NSCC's Rules regarding the appointment of ACATS-Fund/SERV Agents. On May 30, 2005, NSCC filed with the Commission proposed rule change SR–NSCC–2006–06.[5] That rule change, which was effective upon filing, modified NSCC's Rules to enhance the Automated Customer Account Transfer Service (''ACATS'') processing capabilities for NSCC members that outsource some or all of their mutual fund processing services. To accommodate these members, NSCC modified Section 16 of Rule 52, ''Mutual Fund Services—ACAT/Transfers,'' to permit one NSCC member to appoint another NSCC member (or Mutual Fund/Insurance Services member) as its ACATS-Fund/SERV Agent (''Agent'') with regard to the reregistration of eligible mutual fund assets that are part of a customer account transfer through ACATS.

In its original filing NSCC cited the processing flow of a standard ACATS transfer involving an Agent using a receiving member as a processing example. However, in a customer account transfer the NSCC member may be either a receiving member or a delivering member. This filing seeks to clarify that when a member appoints an Agent, such processing applies whether the member is receiving accounts/assets or delivering accounts/assets. Section 16 of Rule 52 will be modified to reflect this.

As previously stated, an Agent must be either an NSCC member or NSCC Mutual Fund/Insurance Services member. An Agent may act on behalf of multiple NSCC members, but a member may designate only one Agent.

A member must notify NSCC of its designation of Agent in such form and within such time frame as is acceptable to NSCC, and the Agent must acknowledge to NSCC its consent to this designation. The member and its Agent will acknowledge to NSCC that the NSCC member shall at all times continue to be responsible for all provisions of NSCC's Rules, specifically with regard to ACATS and ACATS-Fund/SERV transactions, including any and all actions taken by its Agent.

NSCC will maintain a relationship table of those members that designate an Agent. In instances where an Agent has been appointed by a member and has been indicated on input received by NSCC, NSCC will replace the member's information (*i.e.*, clearing number and member name) on registration/transfer instructions transmitted to the relevant mutual fund with those of the Agent. Conversely, on acknowledgements or instructions from the relevant mutual fund, NSCC will replace the Agent's clearing number and member name with those of the member's.

As the proposed rule change makes a technical clarification to an existing NSCC rule, it constitutes a stated interpretation with respect to the meaning of an existing rule and is therefore consistent with Section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[6] and Rule 19b–4(f)(1)[7] thereunder because the proposed rule constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–NSCC–2006–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2006–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2006–10 and should be submitted on or before December 11, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19517 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

[5] Securities Exchange Act Release Nos. 54163 (July 17, 2006), 71 FR 41852 (July 24, 2006) and 54163A (July 28, 2006), 71 FR 44067 (August 3, 2006).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54743; File No. SR–NYSE–2006–91]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 116 (''Stop'' Constitutes Guarantee)

November 13, 2006.

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 October 19, 2006, the New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 116.40 to clarify that market-at-the-close procedures include marketable limit-at-the-close orders.

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. 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

1. Purpose

The Exchange affords its customers the ability to execute two order types specific to the close. These orders are the market-at-the-close order (''MOC'') and the limit-at-the-close order (''LOC''). A MOC order is a market order, which is to be executed in its entirety at the closing price on the Exchange of the stock named in the order, and if not so executed, is to be treated as cancelled. A LOC order is a limit order, which may or may not receive execution on the close depending on the closing price and depth of contra-side interest.

Rule 116.40 provides the procedures for handling MOC orders. These procedures describe the manner in which MOC orders should be paired off and executed. It also explains how any order imbalance should be handled.

The Exchange interprets Rule 116.40 to apply to LOC orders; however, this is not specifically stated in the Rule's text. Through this filing, the Exchange proposes to add the phrase ''and marketable limit-at-the-close'' to Rule 116.40, to remove any ambiguity.

In this context, ''marketable'' refers to the LOC's limit price within the context of the Exchange closing price.

The proposed amendments are contained in Exhibit 5 attached to the Exchange's filing. Rule 116.40 is also the subject of an open filing[5] pending before the Commission. Text being added pursuant to SR–NYSE–2006–65 is denoted by double underscoring in Exhibit 5.

2. Statutory Basis

The basis under the Act[6] for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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 No. SR–NYSE–2006–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] SR–NYSE–2006–65 (filed on August 23, 2006).

[6] 15 U.S.C. 78a.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] The Exchange provided written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing, as required by Rule 19b–4(f)(6)(iii).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–91 and should be submitted on or before December 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19547 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54746; File No. SR–Phlx–2006–71]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Clarifying Its Payment for Order Flow Program as It Relates to Order Flow Providers

November 14, 2006.

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 November 7, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to clarify, in connection with the Exchange's payment for order flow program,[5] who may receive payment for order flow funds that are assessed by the Exchange on members and member organizations[6] and are disbursed, as described in detail below, based on the instructions of the specialist units[7] and Directed ROTs.[8]

The Exchange states that under its current payment for order flow program, any available payment for order flow funds are disbursed by the Exchange according to the instructions of the specialist units and Directed ROTs. A specialist unit or Directed ROT must certify to the Exchange that payment for order flow funds directed by either of them to be paid to Order Flow Providers reflect payment arrangements entered into by the specialist unit or Directed ROT and the Order Flow Provider. The term ''Order Flow Provider'' is defined as any member or member organization that submits, as agent, customer orders to the Exchange.[9]

The Exchange states that in addition to the Order Flow Providers defined above, there are additional order flow providers who are not members or member organizations of the Exchange who also route orders to the Exchange, but do so through a member or member organization. In these situations, the Exchange proposes to clarify that the specialist unit or Directed ROT may instruct the Exchange to direct payment to these order flow providers, in the same way that is done for Order Flow Providers, if they have entered into payment arrangements with a specialist unit or Directed ROT to send order flow to the Exchange. Thus, specialist units and Directed ROTs may instruct the Exchange to direct payment for order flow funds to order flow providers who are members, non-members, member organizations, or non-member organizations, provided, the requirements relating to certification, as described above, have been met. The Exchange notes that such order flow providers may arrange for the member organizations through which they route orders (referred to as ''Order Flow Providers'' in this proposal) to receive their payment for order flow payments and forward those funds to such non-member order flow provider. Although order flow providers may do this, many have chosen to receive payments directly, such that this proposal seeks to codify that practice.

It is the Exchange's understanding that the arrangement to disburse payment for order flow funds to non-member payment for order flow providers, in the same way that it is

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange's payment for order flow program is currently in effect until May 27, 2007. *See* Securities Exchange Act Release No. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR–Phlx–2006–33).

[6] The Exchange states that, specifically, the payment for order flow fee is assessed on specialists/specialist units and Directed Registered Options Traders (''Directed ROTs'') who participate in the Exchange's payment for order flow program, and Registered Options Traders (''ROTs'').

[7] The Exchange states that it uses the terms ''specialist'' and ''specialist unit'' interchangeably herein.

[8] The Exchange states that Directed ROTs are either Streaming Quote Traders (''SQTs'') or Remote Streaming Quote Traders (''RSQTs'') that receive Directed Orders. An SQT is an Exchange ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. AUTOM is the Exchange's electronic order delivery, routing, execution, and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. *See* Exchange Rules 1014(b)(ii) and 1080). An RSQT is an Exchange ROT that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. *See* Exchange Rule 1014(b)(ii)(B). *See* Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR–Phlx–2004–90) and 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR–Phlx–2005–12).

The Exchange states that the term ''Directed Order'' means any customer order to buy or sell, which has been directed to a particular specialist, RSQT, or ''SQT'' by an Order Flow Provider (defined below). The provisions of Phlx Rule 1080(l) are in effect for a one-year pilot period to expire on May 27, 2007. *See* Securities Exchange Act Release No. 53870 (May 25, 2006), 71 FR 31251 (June 1, 2006) (SR–Phlx–2006–27).

[9] *See* Exchange Rule 1080(l).

done for Order Flow Providers (who are members or member organizations of the Exchange), is not unacceptable to the Order Flow Providers. To codify this practice, the Exchange intends to amend its certification form to require that the specialists and Directed ROTs that request payment for order flow funds certify, if applicable, that payments sent directly to a non-member payment for order flow provider is not unacceptable to the Order Flow Provider through whom the orders are routed.

In addition, consistent with current practice, Directed ROTs and specialists who request that payments be made to order floor providers would be required to make, keep current, and preserve all books and records relating to payment for order flow arrangements.[10]

Below is the text of the proposed rule change. Proposed additions are *italicized*.

Summary of Equity Option Charges (p. 3/6)

* * * * *

Equity Option Payment for Order Flow Fees*

(1) For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on ROTs, specialists and Directed ROTs on those trades when the specialist unit or Directed ROT elects to participate in the payment for order flow program.* * *

(2) No payment for order flow fees will be assessed on trades that are not delivered electronically.

	Per contract
QQQQ (NASDAQ–100 Index Tracking Stock SM)	$0.75
Remaining Equity Options	0.70

See Appendix A for additional fees.

*Assessed on transactions resulting from customer orders *and are available to be disbursed by the Exchange according to the instructions of the specialist units/specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders.* This proposal will be in effect for trades settling on or after October 1, 2005 and will remain in effect as a pilot program that is scheduled to expire on May 27, 2007.

* * * Any excess payment for order flow funds billed but not utilized by the specialist or Directed ROT will be carried forward unless the Directed ROT or specialist elects to have those funds rebated to the applicable ROT, Directed ROT or specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange will calculate the amount of excess funds from the previous quarter and subsequently rebate excess funds on a pro-rata basis to the applicable ROT, Directed ROT or specialist who paid into that pool of funds.

* * * * *

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 Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that the purpose of amending the definition of Order Flow Providers[11] as set forth in the Exchange's payment for order flow program is to clarify that the available payment for order flow funds that are disbursed by the Exchange according to instructions of the specialist units and Directed ROTs to Order Flow Providers, may include order flow providers that are not members or member organizations of the Exchange. Consistent with the Exchange's current payment for order flow program, the Exchange would not be involved in the determination of the terms governing the orders that qualify for payment or the amount of any payment. The Exchange states that it would merely be providing administrative support for the payment for order flow program by making the payment for order flow payments on behalf of, and at the direction of, the specialist units or Directed ROTs.

Currently, the term ''Order Flow Provider'' is defined in Exchange Rule 1080(l) as any member or member organization that submits, as agent, customer orders to the Exchange. The Exchange represents that it is not seeking to change the definition as set forth in Exchange Rule 1080(l). As described above, the Exchange merely intends to clarify that in addition to the defined term of Order Flow Provider, order flow providers may include non-members or non-member organizations that submit, as agent, customer orders to the Exchange through a member or member organization. The Exchange is not changing any other aspect of its payment for order flow program pursuant to this filing. The Exchange states that the payment for order flow fee would continue to be assessed on Exchange members, specifically specialists and Directed ROTs who participate in the Exchange's payment for order flow program, in addition to ROTs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[13] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members or other persons using the Exchange's facilities[14] and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by acknowledging that not all order flow providers are members of Phlx, but nonetheless otherwise qualify to have payment for order flow funds, which are assessed on Exchange members and member organizations, directed to them at the direction of the specialist unit or Directed ROT.

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

[10] *See* Exchange Rule 760, Maintenance, Retention and Furnishing of Books, Records, and Other Information.

[11] *See* Exchange Rule 1080(l).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4)–(5).

[14] As stated above, the Exchange notes that the payment for order flow fee is only assessed on Exchange members or member organizations. However, a specialist unit or Directed ROT may instruct the Exchange to direct the funds collected from this fee to an order flow provider (a non-member/member organization of the Exchange).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and Rule 19b–4(f)(2) [16] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–Phlx–2006–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2006–71 and should be submitted on or before December 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19548 Filed 11–17–06; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SMITHSONIAN INSTITUTION

Intent To Prepare an Environmental Impact Statement for Proposed Construction of the Smithsonian National Museum of African American History and Culture

AGENCY: Smithsonian Institution (SI), National Capital Planning Commission (NCPC).

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1509), and in accordance with the Environmental Policies and Procedures implemented by the National Capital Planning Commission, the SI and NCPC announce their intent, as Joint-Lead Agencies, to prepare an environmental impact statement (EIS) to assess the potential effects of constructing and operating the National Museum of African American History and Culture (NMAAHC) within the Smithsonian Institution. The Museum will be located on a 217,800 square foot (SF) or 5 acre site bounded by Constitution Avenue, Madison Drive, 14th and 15th Streets, NW. on the National Mall in Washington, DC. A public meeting will be conducted to ensure that all significant issues related to construction and operation of the proposed museum are identified.

SUPPLEMENTARY INFORMATION: Public Law 108–184, the National Museum of African American History and Culture Act enacted by the Congress of the United States on December 16, 2003, (the Act) established a museum within the Smithsonian Institution to be known as the National Museum of African American History and Culture. It recognizes that such a museum ''would be dedicated to the collection, preservation, research, and exhibition of African American historical and cultural materials reflecting the breadth and depth of the experience of individuals of African descent living in the United States.''

Section 8 of the Act, ''Building for the National Museum of African American History and Culture,'' directs the Smithsonian Board of Regents to select one site among four in Washington, DC for the construction of the museum. The sites identified are the Arts and Industries Building; the area bounded by Constitution Avenue, Madison Drive, 14th, and 15th Streets, NW., now commonly known as the Monument site; the Liberty Loan site located on 14th Street, SW. at the foot of the 14th Street Bridge; and the Banneker Overlook site, located on 10th Street, SW. at the foot of the L'Enfant Plaza Promenade. After undertaking a site evaluation study that analyzed site-specific characteristics and evaluated minimum and maximum build scenarios at each site, as well as a process of consultation with parties specified in the legislation, the Board of Regents of the Smithsonian Institution voted to select the Monument site. The decision was announced on January 30, 2006.

The identity and description of the action to be addressed in this EIS derive primarily from the language of Public Law 180–184, its legislative history, and the studies by the ''National Museum of African American History and Culture Plan for Action Presidential Commission'' that led to its enactment. With regard to the scope of the action, much information on the potential size, configuration, and siting of a museum facility at the Monument site was presented in the Phase II Site Evaluation Study of November 15, 2005, for the use of the Smithsonian Regents in their selection of the site. Graphics included in this study showed the potential in

terms of massing and placement of a museum facility on the candidate sites. Although they were conceptual and only intended for site selection purposes, they are a point of departure for this study and the range of alternatives evaluated in this EIS.

The potential range of alternatives that will be evaluated in the EIS includes the no action or no build alternative and a range of build alternatives derived from the site evaluation study that will include a minimum build-out at approximately 350,000 gross square feet (GSF), a middle range build-out at approximately 415,000 GSF, and a maximum build-out that would not exceed approximately 804,000 GSF. Each alternative description will identify the number of levels above and below ground, general massing, and site setbacks. The Presidential Commission identified 350,000 GSF as the preliminary program space requirements for the museum. Thus, it was used as the baseline or ''point of departure'' for the maximum and minimum build scenarios developed in the site evaluation study. As part of the scoping process, other alternatives may be identified that merit further investigation.

Topics for environmental analysis will be further defined during scoping activities with the public and agencies but will include topics such as historic resources, archeology, visual resources, transportation, public utilities, land use, social and economic issues, and physical and biological resources such as air, geology, and groundwater.

Public Scoping Meeting and Comments: The Smithsonian Institution and the National Capital Planning Commission will solicit public comments for consideration and possible incorporation in the Draft EIS through public scoping, including a scoping meeting, on the proposed museum building at the Monument site. Notice of the public meeting will be publicized in local newspapers and through other sources. To ensure that all issues related to this action are addressed and all significant issues are identified early in the process, comments are invited in writing and orally from all interested and/or potentially affected parties. These comments may be provided at the public meeting or provided in writing to Jill Cavanaugh at the Louis Berger Group, Inc., 2300 N Street, NW., #800, Washington, DC 20037 (until December 15, 2006) and to 2445 M Street, NW., 4th Floor, Washington, DC 20037–1445 (after December 15, 2006). Comments will also be collected at *http://www.nmaahc-eis.com.* All public comments must be postmarked or received on the Web site by January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Jane Passman, Senior Facilities Planner, Smithsonian Institution, Office of Facilities Engineering and Operations, PO Box 37012, 750 9th Street, NW., Suite 5200 MRC 908, Washington, DC 20013–7012; Phone: 202–275–0234; Fax: 202–275–0889.

John E. Huerta,

General Counsel, Smithsonian Institution.

[FR Doc. E6–19496 Filed 11–17–06; 8:45 am]

BILLING CODE 8030–03–P

DEPARTMENT OF STATE

[Public Notice 5617]

Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that persons convicted of violating or conspiring to violate Section 38 of the Arms Export Control Act, as amended, (''AECA'') (22 U.S.C. 2778) are statutorily debarred pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR parts 120 to 130).

DATES: *Effective Date:* Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services to be issued where the applicant or any party to the export, has been convicted of violating certain statutes, including the AECA. In implementing this provision, Section 127.7 of the ITAR provides for ''statutory debarment'' of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment, in accordance with Section 38(g)(4) of the AECA. Any decision to grant reinstatement can be made only after the statutory requirements under Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-base basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons are statutorily debarred following the date of their AECA conviction:

(1) Victor Moscoso, July 26, 2002, U.S. District Court, Southern District of Florida (Miami), Case #: 01–966–CR–SEITZ/001.

(2) Romolo Martinez, February 5, 2004, U.S. District Court, Southern District of Florida (Miami), Case #: 1:02–20923–001–CR–MOORE.

(3) Stephen Jorgensen, January 15, 2001, U.S. District Court, Southern District of Florida (Miami), Case #: 1:00CR00998–001.

(4) Gerald Morey, August 11, 2003, U.S. District Court, Southern District of Florida (Miami), Case #: 1:02–20923–001–CR–MOORE.

(5) Ziad Jamil Gammoh (a.k.a. Al Gammoh; a.k.a. Jamil Gammoh; a.k.a. Ziad Al Gammoh; a.k.a. Ziad Al J Gammoh; a.k.a. Ziad Jamil Salem, Gammoh; a.k.a. Ziad Al J Gammon; a.k.a. Ziad Al Jamil; a.k.a, Al Jamil Ziad), November 7, 2005, U.S. District Court, Central District of California, Case #: SA CR04–97 DOC.

(6) Naji Antoine Abi Khalil, February 2, 2006, U.S. District Court, Eastern District of Arkansas, Case # 4:05CR00200–01,

(7) Martin Armando Arredondo-Meza, January 25, 2006, U.S. District Court Southern District of Texas, Case #: 7:05CR00754–001.

(8) Tomer Grinberg, April 24, 2006, U.S. District Court, Southern District of New York (Foley Square), Case # 04cr573–02,

(9) Kwan Chun Chan (a.k.a. Jenny Chan), May 4, 2006, U.S. District Court District of New Jersey, Case # 05–660–01.

(10) Xiu Ling Chen (a.k.a. Linda Chen), May 4, 2006, U.S. District Court District of New Jersey, Case # 05–659–01.

(11) Hao Li Chen (a.k.a. Ali Chan), May 4, 2006, U.S. District Court, District of New Jersey, Case # 05–658–01.

(12) Xu Weibo (a.k.a. Kevin Xu), May 4, 2006, U.S. District Court, District of New Jersey, Case # 05–657–01.

(13) George Charles Budenz, II, July 17, 2006, U.S. District Court, Southern District of California, Case # 05CR01863–LAB.

(14) Richard Tobey, June 26, 2006, U.S. District Court, Southern District of California, Case # 05CR1462–LAB.

(15) Kellen Lamon Johnson, June 1, 2006, U.S. District Court, District of Montana, Case # CR 05–170–GF–SHE–03.

(16) Dwain Rouse, June 12, 2006, U.S. District Court, District of Montana, Case # CR 05–170–GF–SHE–01.

(17) Erika Jardine (a.k.a. Eriklynn Pattie Jardine; a.k.a. Erika Pattie Jardine), February 22, 2006, U.S. District Court, Eastern District of Pennsylvania, Case # CR–2005–446.

(18) Kal Nelson Aviation, Inc., August 9, 2006, U.S. District Court, Central, District of California, Case # CR05–1158.

(19) Ko-Suen Moo, July 24, 2006, U.S. District Court, Southern District of, Florida, Case # 06–200006–CR–GRAHAM.

(20) Michael P. Murphy Surplus Materials Inc., May 16, 2006, U.S. District, Court, Southern District of California, Case # 06CR0209–BTM.

As noted above, at the end of the three-year period following the date of conviction, the above named persons/entities remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), 127.1(c) and 127.11(a)). Also, under Section 127.1(c) of the ITAR, any person who has knowledge that an other persons is subject to debarment or is otherwise ineligible may not, without disclosure to and written approve from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any export in which such ineligible person may benefit therefrom or in which he has a direct or indirect interest.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Dated: November 2, 2006.

Stephen D. Mull,

Acting Assistant Secretary for Political-Military Affairs, Department of State.

[FR Doc. E6–19609 Filed 11–17–06; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5616]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Gilman International Scholarship Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/A/S/A–07–10.

Catalog of Federal Domestic Assistance Number: 19.425.

Key Dates

Application Deadline: February 2, 2007.

Executive Summary: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the Benjamin A. Gilman International Scholarship Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for the purpose of administering a scholarship program for academic study by Americans outside the United States.

Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

This program provides grants to enable U.S. citizen undergraduate students of limited financial means to pursue academic studies abroad. Such foreign study is intended to expand understanding of other countries and cultures among U.S. students, expose citizens of other countries to Americans from diverse backgrounds, and better prepare U.S. students to assume significant roles in an increasingly global economy.

History

Since the program's inception in 2001, nearly 2,000 Gilman scholars from more than 500 U.S. colleges and universities have studied in 94 countries around the world.

Overview

It is anticipated that, pending appropriation of funds, this grant will provide an assistance award of

approximately $3,918,000 for the purpose of recruiting, selecting, and issuing grants of up to $5,000 to individuals who meet the eligibility requirements listed below toward the cost of up to one academic year of undergraduate study abroad. Supplements for study of critical need languages will also be provided.

The intent of the authorizing legislation for the Benjamin A. Gilman International Scholarship Program is to broaden the U.S. student population that participates in study abroad by focusing on those students who might not otherwise study outside the U.S. due to financial constraints.

The Bureau also seeks to encourage participating students and their institutions to choose non-traditional study-abroad locations, to study languages, and to help under-represented U.S. institutions offer and promote study-abroad opportunities for their students. These objectives should be addressed in grant proposals.

Guidelines

Upon receipt of grant notification, the administering organization should be prepared to announce the program, solicit applications, and award scholarships to U.S. students to begin overseas study as soon as possible.

Student Eligibility

To apply for a scholarship, an applicant must:

- Be a citizen of the United States. Permanent residents of the United States are not eligible.
- Be an undergraduate student in good standing at an institution of higher education in the United States (including both two-year and four-year institutions).
- Be a recipient of Federal Pell Grant funding during the academic term of his/her application.
- Be applying to, or accepted for, a study abroad program eligible for credit from the student's home institution. Proof of program acceptance is required for final award disbursement.
- Not be proposing to study in a country currently under a Travel Warning issued by the United States Department of State or in Cuba. Travel Warnings are issued when the State Department recommends that Americans avoid a certain country. To find a list of these countries, please see *http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html*.

Recruitment, Application, and Selection

1. The grantee organization shall publicize the scholarship competition to accredited institutions of higher education in the United States. This can be achieved through direct contacts with institutions and through participation in major education conferences and events. Emphasis shall be on reaching out to a diverse range of institutions and programs within those institutions.

2. The selection process shall be carried out through a committee that includes representatives of a diverse mix of accredited institutions of higher education in the United States.

3. In ranking eligible applicants for scholarships, consideration should be given to academic excellence, financial need, diversity of the applicant pool, fields of study, proposed destination, plans for language study, and type and location of home institution. Preference should be given to applicants with no previous study abroad experience.

Reporting

After fall and spring selection panels, the grantee organization will submit reports on the number of applicants, the number of participants selected, the names of the institutions of higher education in the United States that applicants and awardees were attending at the time of application, the names of institutions sponsoring the study programs abroad, the names and locations of the institutions of higher education outside the United States that participants attend during their study program abroad, and the fields of study of the participants. Because diversity is an important program goal, the grantee should attempt to collect age, ethnic, gender, and disability data from scholarship applicants and recipients, while respecting Federal guidelines on the solicitation of such information. The grantee shall also provide program information and data to be included in the program's annual end-of-year report to Congress. Additionally, the Bureau of Educational and Cultural Affairs may request other periodic and *ad hoc* reports. This may include separate breakdowns for students studying in regions or countries of strategic interest and students studying critical need languages.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: 2007.

Approximate Total Funding: $3,918,000.

Approximate Number of Awards: 1.

Approximate Average Award: $3,918,000.

Anticipated Award Date: Pending availability of funds, April 1, 2007.

Anticipated Project Completion Date: September 30, 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, the grantee must maintain written records to support all costs which are claimed as a contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the grantee does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

a. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount of approximately $3,918,000, to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may

not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact Coleen Gatehouse, Office of Global Educational Programs, ECA/A/S/A, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel 202–453–8887, fax 202–453–8890, to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/A–07–10 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Coleen Gatehouse and refer to the Funding Opportunity Number ECA/A/S/A–07–10 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and 7 copies of the application should be sent per the instructions under IV.3f. ''Submission Dates and Times section'' below.

IV.3a. 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 U.S. Government. This 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 *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424, which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative, and budget.

Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

Please note: The following is being communicated for informational purposes only and does not directly apply to this solicitation or program. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting, and other requirements.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You

should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants should budget the maximum possible amount for scholarships and keep administrative and overhead costs to a minimum.

IV.3e.2. Allowable costs for the program include the following:

1. Administrative: Salaries and benefits and other direct administrative expenses such as postage, phone, printing and office supplies.
2. Program: Participant expenses, which may include institutional fees, travel expenses, tuition; expenses related to review panels, including travel and per-diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3.f. Application Deadline and Methods of Submission:

Application Deadline Date: February 2, 2007.

Reference Number: ECA/A/S/A–07–10.

Methods of Submission: Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or
2. Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 7 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–07–10, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, 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 not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday—Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible. Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology for linking outcomes to original project objectives is recommended.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated, and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.''

OMB Circular No. A–102, ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.''

OMB Circular No. A–133, ''Audits of States, Local Government, and Non-profit Organizations.''

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;

2. Quarterly program and financial reports which describe activities

undertaken during the reporting period and explain costs incurred under each item presented in the Grant Agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Coleen Gatehouse, Educational Information and Resources Branch, ECA/A/S/A, Room 349, ECA/A/S/A–07–10, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel: 202–453–8887, fax: 202–453–8890, *gatehousecn@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–07–10.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information:

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 13, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–19595 Filed 11–17–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5615]

No FEAR Act Notice

SUMMARY: Pursuant to the requirements of 5 CFR 724.202, (''Notice obligations''), the U.S. Department of State hereby publishes this No FEAR Act Notice. The purpose of the Notice is to inform Department employees, former employees, and applicants for employment of the rights and protections available under Federal antidiscrimination and whistleblower protection laws. This Notice follows the model language provided by the Office of Personnel Management in the Final Rule, Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002—Notification & Training (71 FR 41095). Any questions regarding this notice should be directed to Janice F. Caramanica, Senior Attorney-Advisor, U.S. Department of State, Office of Civil Rights (S/OCR), 2201 C Street, NW., Room 7428, Washington, DC 20520–7428, phone (202) 647–9295, fax (202) 647–4969, e-mail *caramanicajf@state.gov.*

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR part 1614 and the Office of Civil Rights Web site at *http://www.state.gov/s/ocr.*

If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (*e.g.*, EEO/civil rights office, human resources office or legal office). Additional information regarding Federal antidiscrimination whistleblower protection and retaliation laws can be found at the EEOC Web site-*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: November 11, 2006.

Harry K. Thomas, Jr.,

Executive Secretary, Department of State.

[FR Doc. E6–19594 Filed 11–17–06; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 5614]

Eligibility for Participation in Summer Work Travel Programs

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Pursuant to statutory authority granted the Department of State by Public Law 105–277, foreign post-secondary students participating in a cultural exchange program may be eligible to enter the United States to work and travel during their summer vacations from studies. To be eligible for participation in these programs, foreign students must be selected, screened, placed, and monitored by Department-designated organizations that are authorized to conduct educational and cultural exchange programs. These programs further the public diplomacy efforts of the United States by providing participants with the opportunity to experience the United States and its people.

Participation in these programs is dependent upon student status. For the purpose of determining program eligibility, designated program sponsors may select for program participation only those potential participants who are currently enrolled and participating full-time in post-secondary studies at the time of application. This certification will be published in the **Federal Register**.

Dated: November 9, 2006.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Department of State.

[FR Doc. E6–19593 Filed 11–17–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26304]

Agency Information Collection Activities; Revision of Approved Information Collections: OMB Control Numbers 2126–0010 (Motor Carrier Safety Assistance Program); 2126–0011 (Commercial Driver Licensing and Test Standards); and 2126–0025 (Transportation of Household Goods; Consumer Protection)

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

ACTION: Notice; request for comments.

SUMMARY: FMCSA invites public comment on its intent to request approval from the Office of Management and Budget (OMB) to revise three (3) information collections (ICs), entitled ''Motor Carrier Safety Assistance Program'' (2126–0010), ''Commercial Driver Licensing and Test Standards'' (2126–0011), and ''Transportation of Household Goods; Consumer Protection'' (2126–0025). These ICs are necessary to ensure that motor carriers comply with changes made by various provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995 and implementing regulations at 5 CFR 1320.10.

DATES: Comments must be submitted on or before January 19, 2007.

ADDRESSES: You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to 202/493–2251; or submit them electronically at *http://dms.dot.gov*. All comments should include the docket number in this notice's heading. All comments may be examined and copied at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you desire a receipt you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment.

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** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Frederic L. Wood, Office of Chief Counsel, Regulatory Affairs Division (MC–CCR), Federal Motor Carrier Safety Administration, Room 8201, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–0834. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The information stated below reflects the proposed changes and the new total annual burden hours for each.

(1) *Title:* Motor Carrier Safety Assistance Program.

FMCSA IC: OMB Control No. 2126–0010.

Form No.: Forms MCSAP–1, MCSAP–2, and MCSAP–2A.

Type of Review: Revision of a currently approved collection.

Respondents: State Grant Applicants.

Number of Respondents: 52 (per quarter).

Estimated Time Per Response: 80 hours.

Expiration Date: November 30, 2007.

Frequency: Quarterly (reports) and Annually (grant application).

Total Annual Burden: 12,264 hours.

(2) *Title:* Commercial Driver Licensing and Test Standards.

FMCSA IC: OMB Control No. 2126–0011.

Form No.: None.

Type of Review: Revision of a currently approved collection.

Respondents: Holders of and applicants for commercial driver's licenses.

Number of Respondents: 12,523,571/year.

Estimated Time Per Response: 6 minutes.

Expiration Date: April 30, 2007.

Frequency: On occasion.

Total Annual Burden: 1,269,856 hours.

(3) *Title:* Transportation of Household Goods; Consumer Protection.

FMCSA IC: OMB Control No. 2126–0025.

Form No.: Form MCSA–2P.

Type of Review: Revision of a currently approved collection.

Respondents: Motor Carriers and Individual Shippers of Household Goods.

Number of Respondents: 6,017.

Estimated Time Per Response: Varies from 5 minutes to display assigned U.S. DOT number in created advertisement to 125 minutes to distribute consumer publication.

Expiration Date: August 31, 2008.

Frequency: On occasion.

Total Annual Burden: 4,648,370 hours.

Background

Summarized below is background information for all three (3) information collection requests subject to this notice.

First, the Motor Carrier Safety Assistance Program (MCSAP) requires that the Secretary of Transportation (Secretary) review reports submitted by the States and conduct inspections to continuously evaluate a State's enforcement plan. Sections 401 through 404 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, Jan. 6, 1983) (STAA), as amended by 49 U.S.C. 31100 *et seq.*, established a program of financial assistance to the States to implement programs to enforce Federal and compatible State rules, regulations, standards, and orders applicable to commercial motor vehicle (CMV) safety. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005) (SAFETEA–LU) amended 49 U.S.C. 31102(b)(1) to modify the conditions a State must meet to qualify for grant funds through MCSAP and now requires the following conditions be addressed in the State's Commercial Vehicle Safety Plan: (1) Deploying technology as part of performance-based activities to enhance the efficiency and effectiveness of CMV safety programs; (2) disseminating as part of the CMV and non-CMV licensing examination information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles; (3) conducting comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk areas; (4) ensuring that inspections of certain passenger vehicles are conducted at a station or other facility where a motor carrier may make a planned stop; and (5) allowing the use of funds to conduct documented enforcement of State traffic laws. The overall impact of these provisions increases total burden hours by an estimated 403 burden hours, chiefly as a result of non-CMV traffic enforcement activities.

Second, the Commercial Driver Licensing (CDL) and Test Standards program ensures that licensed drivers are properly qualified to drive the vehicles they operate and that drivers do not have a history of high-risk safety behavior. The Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, Oct. 27, 1986), as amended by 49 U.S.C. chapter 313, required, among other things, that each driver have only one license, that States be notified of any convictions of traffic law violations, and that employers be notified within one business day of notification of suspension, revocation, or cancellation of a license or loss of the right to operate a CMV. States must comply with CDL program requirements and pass State compliance reviews, or a portion of their Federal-aid highway funds can be withheld. SAFETEA–LU made two amendments to the CDL program. Section 4102(b)(2)-(4) increased the minimum disqualification periods and civil penalties for drivers and the maximum civil penalties for employers convicted of violating an out-of-service order. Section 4124(c) modified the State penalty for noncompliance by adding the phrase ''up to'' before the existing phrases ''5 percent'' and ''10 percent,'' respectively. This potentially reduces the penalty provisions for the first and subsequent years, respectively, for noncompliance with the Federal CDL requirements. Because of an adjustment made to reflect the net effect of an increase in the number of CDL driver records and a decrease in the number of active CDL driver records, the paperwork burden has decreased by an estimated 3,142 burden hours. This change is independent of these SAFETEA–LU provisions.

Third, in the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1749, Dec. 9, 1999) (MCSIA), Congress authorized the Agency to regulate household goods carriers engaged in interstate operations for individual shippers. In earlier legislation, Congress abolished the Interstate Commerce Commission and transferred the Commission's jurisdiction over household goods transportation to the U.S. Department of Transportation (DOT) (ICC Termination Act of 1995, Public Law 104–88). Prior to FMCSA's establishment, the Secretary delegated this household goods jurisdiction to the Federal Highway Administration, FMCSA's predecessor organization within DOT. A General Accounting Office report, ''Consumer Protection: Federal Actions Are Needed to Improve Oversight of the Household Goods Moving Industry,'' No. GAO–01–318, found that DOT needed to increase regulatory oversight of the household goods moving industry and increase consumer education. FMCSA subsequently issued rules that clarified industry requirements and continued a requirement that motor carriers provide individual shippers of household goods with the consumer pamphlet ''Your Rights and Responsibilities When You Move'' (Appendix A to 49 CFR Part 375) to educate consumers on their legal rights in the moving process (70 FR 39949, July 12, 2005).

Sections 4202 through 4216 of SAFETEA–LU amended various provisions of existing law regarding household goods transportation, specifically addressing: definitions (section 4202); payment of rates (section 4203); registration requirements for household goods motor carriers (section 4204); carrier operations (section 4205); enforcement of regulations (section 4206); liability of carriers under receipts and bills of lading (section 4207); arbitration requirements (section 4208); civil penalties for brokers and unauthorized transportation (section

4209); penalties for holding goods hostage (section 4210); consumer handbook (section 4211); release of broker information (section 4212); working group for Federal-State relations (section 4213); consumer complaint information (section 4214); review of liability of carriers (section 4215); and application of State laws (section 4216). These provisions require corresponding changes to the ''Your Rights and Responsibilities When You Move'' consumer pamphlet. Section 4205 also requires the motor carrier to provide to the shipper a copy of the publication ''Ready to Move?'' (or its successor publication). These publications provide concise, valuable consumer protection information regarding the legal rights of individual shippers.

The household goods transportation provisions of SAFETEA–LU increase total paperwork burden by an estimated 278,333 burden hours. The largest portion of this increase stems from requirements in section 4205 regarding the estimate of the transportation charges and the physical survey of the household goods.

Public Comments Invited: You are asked to comment on any aspect of the information collections referenced here, including: (1) Whether the proposed collection is necessary for FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued on: November 9, 2006.

John H. Hill,

Administrator.

[FR Doc. E6–19564 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Announcement of Establishment of the Motor Carrier Safety Advisory Committee; Request for Nominations

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

ACTION: Notice of establishment of the Motor Carrier Safety Advisory Committee; request for member nominations.

SUMMARY: FMCSA announces the establishment of the Motor Carrier Safety Advisory Committee as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The advisory committee will provide advice and recommendations to the FMCSA Administrator on the needs, objectives, plans, approaches, content, and accomplishments of motor carrier safety programs and motor carrier safety regulations. This notice also solicits nominations for interested persons to serve on the advisory committee. The Administrator will appoint up to 20 members to the Motor Carrier Safety Advisory Committee. The advisory committee will begin work in 2006.

DATES: Nominations for the Motor Carrier Safety Advisory Committee must be received on or before January 4, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Poyer, Chief, Strategic Planning and Program Evaluation Division, Office of Policy Plans and Regulation, (202) 366–6408, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005), requires the Secretary to establish the Motor Carrier Safety Advisory Committee. The Committee will provide advice and recommendations to the Administrator of the Federal Motor Carrier Safety Administration (FMCSA) on the needs, objectives, plans, approaches, content, and accomplishments of motor carrier safety programs and motor carrier safety regulations. The Committee will be comprised of up to 20 members appointed by the Administrator for up to two-year terms. They will be selected from among individuals who are not employees of FMCSA and who are specially qualified to serve on the Committee based on their education, training, or experience. The members will include representatives of the motor carrier industry, safety advocates, and safety enforcement officials. Representatives of a single enumerated interest group may not constitute a majority of the Committee members. The Administrator will designate a chairman of the Committee from among the members. Committee members will not be officers or employees of the Federal Government and will serve without pay. The Administrator may allow a member, when attending meetings of the Committee or a subcommittee, reimbursement of expenses authorized under Section 5703 of Title 5, United States Code and the Federal Travel Regulation, 41 CFR part 301, relating to per diem, travel and transportation. FMCSA anticipates calling Committee meetings at least four times each year (excluding the initial year). Meetings will be open to the general public, except as provided under the Federal Advisory Committee Act (5 U.S.C. App 2). Notice of each meeting will be published in the **Federal Register** at least 15 calendar days prior to the date of the meeting.

II. Motor Carrier Safety Advisory Committee Charter [This Is the Text of the Charter That DOT/FMCSA Has Filed With the General Services Administration.]

1. *Purpose:* This charter establishes the Motor Carrier Safety Advisory Committee and provides for its operation in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2); 41 CFR part 102–3; DOT Order 1120.3B; and Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59. The charter also sets forth the principles governing the Committee's operation.

2. *Scope and Objectives:* The Committee will provide advice and recommendations to the Administrator of the Federal Motor Carrier Safety Administration (FMCSA) on motor carrier safety programs and motor carrier safety regulations.

3. *Duties:* The members of the Committee shall:

a. attend Committee meetings;

b. gather information as necessary to discuss issues presented by the Designated Federal Official (DFO);

c. deliberate; and

d. provide written consensus advice to the Administrator.

4. *Support:* The Administrator shall provide support staff for the Committee. On request of the Committee, the Administrator shall provide information, administrative services, and supplies that the Administrator considers necessary for the Committee to carry out its duties and powers. FMCSA's Strategic Planning and Program Evaluation Division shall furnish support services for the operation of the Committee.

5. *Designated Federal Officer and Sponsor:* The Designated Federal Officer (DFO) for the Committee and its subcommittees is FMCSA's Associate Administrator for Policy and Program Development, or his or her designee.

The DFO shall designate an independent facilitator for advisory committee meetings. The Committee sponsor is FMCSA's Director for the Office of Policy Plans and Regulation, or his or her designee.

6. *Cost:* The annual operating costs associated with the Committee's functions are estimated to be $40,000, including all direct and indirect expenses. We estimate that .25 full-time equivalent positions will be required to support the Committee.

7. *Membership:* The Committee shall be comprised of up to 20 members (special government employees and/or representatives) appointed by the Administrator for up to 2-year terms. Members serve at the pleasure of the Administrator, subject to their stated terms. Members may be reappointed to one or more consecutive terms. Members will be selected from among individuals who are not employees of FMCSA and who are specially qualified to serve on the Committee based on their education, training, or experience. The members shall include representatives of the motor carrier industry, safety advocates, and safety enforcement officials. Representatives of a single enumerated interest group may not constitute a majority of the Committee. Members may continue to serve until appointment of their replacements.

8. *Officers:* The Administrator shall designate a chairman among members of the Committee.

9. *Organization:* The chairman may recommend subcommittees subject to approval of the Agency. Subcommittees will be established for limited purposes within the scope and objectives of the full Committee. The chairman of any subcommittee shall be a member of the full Committee and shall be appointed by the full Committee chairman with the approval of the DFO. Members of a subcommittee may be appointed from any source by the full Committee chairman with the approval of the DFO. Members of a subcommittee do not become members of the full Committee and are not eligible for expenses under item 10 of this charter. Subcommittees will submit all recommendations only to the full Committee. Subcommittees may be terminated by the full Committee chairman, subject to approval by the DFO.

10. *Compensation for Members:* Committee members are not officers or employees of the Federal Government and shall serve without pay; except that the Administrator may allow a member, when attending meetings of the Committee or a subcommittee, reimbursement of expenses authorized under Section 5703 of Title 5, United States Code and the Federal Travel Regulation, 41 CFR part 301, relating to per diem, travel, and transportation. All travel by individual members when engaged in official Committee business shall be approved in advance by the DFO, and arranged and funded by the sponsor.

11. *Meetings:* The DFO anticipates calling Committee meetings at least four times each year (excluding the initial year). The agenda for all meetings shall be set by the DFO. Meetings shall be open to the general public, except as provided under FACA. Notice of each meeting shall be published in the **Federal Register** at least 15 calendar days prior to the date of the meeting. Notice shall include the meeting agenda. The DFO or his or her designee shall attend and preside at each meeting. The DFO or his or her designee shall adjourn any meeting when determined to be in the public interest. Detailed minutes of each meeting shall be certified by the DFO or his or her designee and maintained by the sponsor. The minutes, as certified, shall be available for public inspection and copying in the office of the sponsor.

12. *Reports:* All Committee and subcommittee reports and recommendations shall be submitted by the chairman to FMCSA's Administrator through the DFO or his or her designee. The DFO or his or her designee shall direct the Committee to prepare such documents and any other reports. Within 60 days following the last meeting of each calendar year, the DFO or his or her designee shall submit to FMCSA's Administrator an annual report describing the Committee's membership, activities, and accomplishments for the year. Committee and subcommittee reports and other documents, which are made available to or prepared by the Committee, shall be included in FMCSA's public docket and shall be available for public inspection and copying in accordance with the Freedom of Information Act (5 U.S.C. 552).

13. *Date of Termination:* The Committee shall terminate on September 30, 2010.

14. *Charter Filing Date:* The filing date of this charter, which is also the charter's effective date, is September 8, 2006.

III. Request for Nominations

FMCSA seeks nominations for membership to the Motor Carrier Safety Advisory Committee from representatives of the motor carrier industry, safety advocates, and safety enforcement officials with specialized experience, education, or training in commercial motor vehicle issues. The Agency is committed to appointing members to the Committee with diverse professional backgrounds, as well as a broad array of gender, ethnicity, demographic, and socioeconomic factors. All Committee members must be able to attend three to four meetings each year in Washington, DC or by teleconference, and spend approximately five to six hours each month providing additional consultation. Interested persons should have a commitment to transportation safety, knowledge of transportation issues, experience on panels that deal with transportation safety, and a record of collaboration and professional experience in commercial motor vehicle issues. For further information, please contact Scott Poyer at 202–493–0432, or by e-mail at *Scott.Poyer@dot.gov*. For nomination information, please contact Karen Lynch at 202–366–8997, or by e-mail at *Karen.Lynch@dot.gov*. Nominations must be received on or before January 4, 2007.

Issued on: November 13, 2006.

John H. Hill,

Administrator.

[FR Doc. E6–19560 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2005–25751]

Qualification of Drivers; Exemption Applications; Diabetes

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt forty-five individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective November 20, 2006. The exemptions expire on November 20, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8:30

a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* and/or 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.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov*.

Background

On October 3, 2006, FMCSA published a Notice of receipt of Federal diabetes exemption applications from forty-five individuals, and requested comments from the public (71 FR 58464). The public comment period closed on Nov 2, 2006. Four comments were received, and fully considered by FMCSA in reaching the final decision to grant the exemptions.

FMCSA has evaluated the eligibility of the forty-five applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with Insulin-Treated Diabetes Mellitus (ITDM) to operate CMVs is feasible. The 2003 Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These forty-five applicants have had ITDM over a range of 1 to 43 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 3, 2006, **Federal Register** Notice (71 FR 58464). Because there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received four comments in this proceeding. All four comments were recommendations in favor of granting the Federal diabetes exemption to Mr. Campbell, Mr. Martin, and Mr. Carroll.

Conclusion

After considering the comments to the docket and based upon its evaluation of the forty-five exemption applications, FMCSA exempts John N. Anderson, Federico G. Barajas, Carl E. Bassinger, Allan C. Boyum, Terry L. Brantley, Steven E. Brechting, Matthew T. Brown, James P. Campbell, Scott A. Carlson, James F. Carroll, Joseph L. Coggins, Edward V. Coppinger, Walter C. Evans, Michael H. Foley, Lawrence S. Forcier, Stephanie D. Fry, Robert W. Gaultney, Jr., Marlin R. Hein, Paul T. Kubish, Carolyn J. Lane, Randall L. Lay, David M. Levy, Shelton R. Lynch, Sterling C. Madsen, Sterlon E. Martin, Bradley Monson, David F. Morin, Jeffrey J. Morinelli, Ronald D. Murphy, Michael S. Mundy, Charles B. Page, John A. ReMaklus, Howard D. Rood, Michael D. Schooler, Arthur L. Stapleton, Jr., Joseph R. Suits, Cory L. Swanson, Jeffrey M. Thew, Mark A. Thompson, Glenn R. Tyrrell, Barney J. Wade, Dennis D. Wade, Donald L. Winslow,

Eugene R. Whitaker, Richard A. Zellweger, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 9, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–19563 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2006–xxxx]

Meeting Notice; Forum on Human Factors Research Necessary To Support Advanced Vehicle Safety Technologies

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

ACTION: Meeting notice.

SUMMARY: NHTSA announces a Forum on Human Factors Research Necessary to Support Advanced Vehicle Safety Technologies to be held in Falls Church, Virginia. This notice announces the date, time and location of the forum, which will be open to the public with advanced registration on a space-available basis.

DATES: The forum will be held on January 25, 2007, from 8:30 a.m. to 5 p.m. and continue on January 26, 2007 from 8:30 a.m. to noon.

ADDRESSES: The forum will be held at the Mitretek Systems Corporate Headquarters at 3150 Fairview Park Drive, Falls Church, VA 22042, telephone (202) 551–1112.

FOR FURTHER INFORMATION CONTACT: Michael Perel, Office of Human Vehicle Performance Research, National Highway Traffic Safety Administration, 400 Seventh Street, SW. Telephone number (202) 366–5675; e-mail *Mike.Perel@dot.gov.*

SUPPLEMENTARY INFORMATION: Advanced vehicle safety technologies (AVST), such as collision warning systems (CWS), can assist drivers in preventing crashes and minimizing harm. The controls, displays, and operation of AVST are fundamental elements that influence the safety effectiveness of these technologies. The ability of drivers to recognize, understand, and properly respond to the visual, auditory, and other feedback from these technologies is influenced by the degree to which their designs are compatible with drivers' capabilities. Proper designs will allow drivers to achieve the optimum safety benefit, whereas poor designs can limit or extinguish any advantage.

The purpose of this forum is to identify human factors research to help guide the development and deployment of AVST that can improve safety and minimize potential adverse effects. A diverse group of human factors and vehicle safety experts are expected to participate. The forum participants will discuss the impact of current and future AVST on safety and driving performance, outline high priority areas for research, and identify organizations to sponsor the research.

The primary focus of the forum will include current and emerging AVST systems such as those that provide only safety alerts (*e.g.*, forward collision warning systems (FCW), road departure warning (RDCW), lane departure warning (LDW), intersection collision warning), systems that provide crash warning(s) and automated control (*e.g.*, FCW combined with automatic braking), and other driver assistance systems that can impact safety (*e.g.*, adaptive cruise control (ACC), brake assist, backover safety systems, and automatic lane keeping). This forum will not address driver workload or driver distraction issues associated with information and entertainment systems.

Through a combination of presentations by invited speakers and group discussions among attendees, the forum participants will focus on:

- Identifying potential human factors safety problems.
- Determining safety-relevant metrics to quantify the problem.
- Determining research needs and identifying best practices and guidelines for system design and operation.
- Identifying stakeholders to sponsor and conduct research.

Examples of potential human factors safety concerns that may be discussed at the forum include:

Unintended Consequences: Drivers may react to the presence of AVST with behaviors that can undermine the potential effectiveness of the technologies. For example, drivers may not respond quickly enough to collision warnings if the system has false alarms or too many warnings. Even if the system is perfect, drivers may over-rely on the technology, increase their risk taking behaviors, and negate any potential safety benefits. Drivers may not understand the system's limitations and trust the system to a point where the system cannot perform to their expectations. For example, some systems only work within specified speed ranges or other limits, but drivers may expect the systems to perform at all speeds and in all conditions. Thus, unintended consequences could result from incorrect driver assumptions and perceptions about system operation.

Design Characteristics: Another human factors concern is the variability in the design of these technologies within and across different vehicle manufacturers. As drivers change between vehicles with new or unfamiliar AVST characteristics or CWS interfaces, there is a potential for negative transfer of learning. That is, drivers may miss or not comprehend an auditory warning from System A because they are accustomed to the warning sound provided by System B.

Driver-centered Design: The forum will also address the issue of how variations in driver performance should be accommodated by system design. Driver performance can vary from person to person, from situation to situation, and from time to time. For example, as a group, older drivers have poorer eyesight, slower reaction times, and a decreased ability to perform multiple tasks simultaneously. Drivers may respond differently in heavy traffic versus light traffic. Tired drivers may behave differently than alert drivers. The intended benefits of AVST may not be achieved unless the systems are designed to accommodate a broad range of the variability in the characteristics of the driving population. The safety concern is that some drivers may not detect warnings, respond appropriately, or turn off systems that are perceived as annoying or useless.

Integrating Multiple Systems: Another forum topic will be the issue of integrated warnings from multiple systems. While integrated systems have the potential to prevent a large portion of crashes, they pose unique design issues (*e.g.*, with what priority should the alarms be presented). The Department of Transportation (DOT) is conducting a large-scale field operational test called Integrated Vehicle-Based Safety Systems (IVBSS)

to better understand and evaluate some aspects of warning integration (*http://www.its.dot.gov/ivbss/index.htm*). However, more discussion is needed to fully address this emerging issue as increasing numbers of AVST are brought into vehicles.

The meeting will be open to the public with advanced registration on a space-available basis. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Aretha Howard at Mitretek System at *aretha.howard@mitretek.org* or by phone at (202) 551–1112. The meeting will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact Mike Perel by January 15, 2007.

A final agenda will be placed in the meeting docket at a later date. Meeting minutes and other information received by NHTSA at the forum also will be available in the meeting docket. Should it be necessary to cancel the meeting due to inclement weather or any other emergencies, a decision to cancel will be made as soon as possible and each registered participant will be notified by e-mail. If you do not have access to e-mail, you may contact Aretha Howard at Mitretek for additional information.

Draft Agenda

January 25, 2007

8 a.m. Registration

Overview/Introduction

8:30 a.m. Opening Remarks—NHTSA Administrator.

8:45 a.m. Meeting Background and Purpose.

Status of Advanced Vehicle Safety Technologies and Human Factors Guidelines

9 a.m. Review of current and future advanced vehicle safety technologies.

9:30 a.m. Review of existing global human factors guidelines for AVST.

10 a.m. Human factors research directions and future needs: Industry views.

10:30 a.m. Break.

10:45 a.m. Human factors research directions and future needs: Government views.

11:15 a.m. Human factors research directions and future needs: Researchers views.

11:45 a.m. Lunch.

Current NHTSA Initiatives

1 p.m. Crash warning system interfaces: Human factors insights and lessons learned—Battelle.

1:30 p.m. Integrated Vehicle Based Safety Systems (IVBSS): Crash Warning Integration Challenges—UMTRI.

1:45 p.m. Cooperative Intersection Collision Avoidance Systems—Virginia Tech.

2 p.m. Other research.

2:15 p.m. Open Discussion (Entire Group).

3 p.m. Afternoon Break.

Future Research

3:15 p.m. Needed research and how do we make it happen?

3:30 p.m. Breakout group discussions: Research needs, methods, metrics, and funding mechanisms.

4:45 p.m. Summary of the Day and Next Steps. 5 p.m. Adjourn.

January 26, 2007

8:30 a.m. Complete breakout group discussions.

10 a.m. Review of breakout group recommendations.

11:30 a.m. Plenary group discussion.

Issued on: November 13, 2006.

Joseph N. Kanianthra,

Associate Administrator for Vehicle Safety Research.

[FR Doc. E6–19562 Filed 11–17–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Notice Regarding Unauthorized Access to Customer Information.''

DATES: You should submit comments by January 19, 2007.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0227, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0227, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend, without revision, the approval of the following information collection:

Title: Notice Regarding Unauthorized Access to Customer Information.

OMB Number: 1557–0227.

Description: Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6901) requires the OCC to establish standards for national banks relating to administrative, technical, and physical safeguards to: (1) Insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

The Interagency Guidelines Establishing Information Security Standards, 12 CFR part 30, Appendix B (Security Guidelines) implementing section 501(b) require each bank to consider and adopt a response program, if appropriate, that specifies actions to be taken when the bank suspects or detects that unauthorized individuals have gained access to customer information.

The Interagency Guidance on Response Programs for Unauthorized Customer Information and Customer Notice (Breach Notice Guidance), which

interprets the Security Guidelines states that, at a minimum, a bank's response program should contain procedures for the following:

(1) Assessing the nature and scope of an incident, and identifying what customer information systems and types of customer information have been accessed or misused;

(2) Notifying its primary Federal regulator as soon as possible when the bank becomes aware of an incident involving unauthorized access to or use of sensitive customer information;

(3) Consistent with the OCC's Suspicious Activity Report regulations, notifying appropriate law enforcement authorities, in addition to filing a timely SAR in situations involving Federal criminal violations requiring immediate attention, such as when a reportable violation is ongoing;

(4) Taking appropriate steps to contain and control the incident to prevent further unauthorized access to or use of customer information, for example, by monitoring, freezing, or closing affected accounts, while preserving records and other evidence; and

(5) Notifying customers when warranted.

This collection of information covers the notice provisions in the Breach Notice Guidance.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 2,200.

Estimated Total Annual Responses: 2,244.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 53,844 hours.

Comments submitted in response to this notice will be summarized and 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 on respondents, including through the use of automated collection techniques or other forms of information technology;

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information; and

(f) Whether the estimates need to be adjusted based upon banks' experience regarding the number of actual security breaches that occur.

Dated: November 14, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E6–19511 Filed 11–17–06; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New (VA Form 29–0812)]

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 for information needed to determine a claimant's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 19, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@.va.gov*. Please refer to ''OMB Control No. 2900—New (VA Form 29–0812)'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

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. 3501–21), 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.

Title: Service-Disabled Veterans Insurance—Waiver of Premiums, VA Form 29–0812.

OMB Control Number: 2900—New (VA Form 29–0812).

Type of Review: New collection.

Abstract: VA Form 29–0812 is completed by claimants who are totally disabled to request a waiver of their Service-Disabled Veterans Insurance policy premiums.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,167 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,500.

Dated: November 7, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–19592 Filed 11–17–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0219]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), 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 for information needed to determine eligibility of persons applying for healthcare benefits under Civilian Health and Medical Program—VA (CHAMPVA) and to adjudicate claims submitted under CHAMPVA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 19, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Ann W. Bickoff, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail: *ann.bickoff@va.gov*. Please refer to ''OMB Control No. 2900–0219'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 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, 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.

Titles:

a. Application for CHAMPVA Benefits, VA Form 10–10d.

b. CHAMPVA Claim Form, VA Form 10–7959a.

c. CHAMPVA Other Health Insurance (OHI) Certification, VA Form 10–7959c.

d. CHAMPVA Potential Liability Claim, VA Form 10–7959d.

OMB Control Number: 2900–0219.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–10d is used to determine eligibility of persons applying for healthcare benefits under the CHAMPVA program.

b. VA Form 10–7959a is used to accurately adjudicate and process beneficiaries, claims for payment/reimbursement of related healthcare expenses.

c. VA Form 10–7959c is used to systematically obtain other health insurance information and to correctly coordinate benefits among all liable parties.

d. VA Form 10–7959d is used to gather additional information relative to the injury or illness as well as third party claim information.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 19,668 hours.

a. VA Form 10–10d—4,917 hours.

b. VA Form 10–7959a—4,717 hours.

c. VA Form 10–7959c—9,567 hours.

d. VA Form 10–7959d—467 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–10d—10 minutes.

b. VA Form 10–7959a—10 minutes.

c. VA Form 10–7959c—10 minutes.

d. VA Form 10–7959d—7 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 119,200.

a. VA Form 10–10d—29,500.

b. VA Form 10–7959a—28,300.

c. VA Form 10–7959c—57,400.

d. VA Form 10–7959d—4,000.

Dated: November 7, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–19600 Filed 11–17–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

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; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 20, 2006.

ADDRESSES: Submit written comments on this collect of information through *http://www.Regulations.gov*; or 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. 2900–0636'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Initiative Coordination Service (005G1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0636.''

SUPPLEMENTARY INFORMATION:

Title: Certification Required from Individuals Electing Accelerated Payments and Agreement with Educational Institutions.

OMB Control Number: 2900–0636.

Extension of a currently approved collection.

Abstract: Claimants electing to receive an accelerated payment for educational assistance allowance must certify they received such payment and how the payment was used. The data collected is used to determine the claimant's entitlement to accelerated payment.

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 June 8, 2006 at pages 33340–33341.

Affected Public: Individuals or household.

Estimated Annual Burden: 97 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 743.

Estimated Annual Responses: 1,167.

Dated: November 6, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Initiative Coordination Service.

[FR Doc. E6–19602 Filed 11–17–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will conduct a telephone conference call meeting from 12 p.m. to 4 p.m. on December 4, 2006, at VA Central Office, 1722 I Street, NW., Room 915, Washington, DC.

The purpose of the Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration.

This meeting will focus on the clinical research program and will be open to the public for approximately one hour at the start of the meeting to discuss the general status of the program. The remaining portion of the meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, reference to staff and consultant critiques of research protocols. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing a portion of this meeting is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of the minutes of this meeting and roster of the members should contact LeRoy G. Frey, Ph.D., Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420 at (202) 254–0288.

Dated: November 13, 2006.

By Director of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–9280 Filed 11–12–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
November 20, 2006

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 060511126–6285–02; I.D. 050306E]

RIN 0648–AT71

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This action implements statutory provisions for the Central Gulf of Alaska Rockfish Pilot Program (hereafter referred to as the Program). This action is necessary to enhance resource conservation and improve economic efficiency for harvesters and processors who participate in the Central Gulf of Alaska (GOA) rockfish fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable law.

DATES: Effective on December 20, 2006.

ADDRESSES: Copies of Amendment 68; the final Environmental Assessment (EA) and Regulatory Impact Review (RIR); Initial Regulatory Flexibility Analysis (IRFA); and Final Regulatory Flexibility Analysis (FRFA) for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh, and on the NMFS Alaska Region website at *http://www.fakr.noaa.gov*. The proposed rule to implement Amendment 68 also may be accessed at this website.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS (at the above address, and by e-mail to *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the GOA are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Congress granted NMFS additional specific statutory authority to manage rockfish fisheries under the FMP in Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–199; Section 802). In Section 802, Congress required the Secretary in consultation with the Council to establish the Program with specific provisions. The Program was developed and recommended by the Council to meet the requirements of Section 802, which states:

SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM.

The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for Pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non-rockfish species and non-target rockfish species currently harvested with Pacific ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species. The pilot program will sunset when a Gulf of Alaska Groundfish comprehensive rationalization plan is authorized by the Council and implemented by the Secretary, or 2 years from date of implementation, whichever is earlier.

The Council adopted the proposed Program on June 6, 2005. NMFS published a notice of availability for Amendment 68 on May 15, 2006 (71 FR 27984). The public comment period on Amendment 68 ended on July 14, 2006. NMFS received one comment specific to Amendment 68. That comment has been addressed in our Response to Comment section for this rule. On June 7, 2006, NMFS published a proposed rule to implement the Program (71 FR 33040). The public comment period ended on July 24, 2006. NMFS received nine letters on the proposed rule, including the letter submitted during the Amendment 68 comment period. These letters contained a total of 120 unique comments. These comments are addressed in the Response to Comment section of this rule below. The Secretary approved Amendment 68 on August 11, 2006.

NOAA General Counsel reviewed Section 802 and in a February 3, 2005, legal opinion to the Council concluded that:

(1) Section 802 requires the Secretary of Commerce (Secretary) and the Council to recognize the historic participation of fishing vessels and fish processors for specific time periods, geographical areas, and rockfish species when establishing the [Program]; and (2) Section 802 does not authorize recognition of the historic participation of fishing vessels or processors in years other than those specified in Section 802. Further, Section 802 defines the range of years, but does not specify that a processor must have actually processed in each of those years in order to be eligible to participate in the [Program].

The opinion by NOAA General Counsel noted further that:

Section 802 authorizes the Council and Secretary to develop a program that would establish ''[American Fisheries Act(AFA)]-style'' cooperatives or a program that would establish limited entry licenses for processors in the [Central GOA] rockfish fishery. However, Section 802 does not authorize the establishment of processor shares since they are prohibited under Section 802 of the [Consolidated Appropriations Act of 2004]. The legislative history supports the position that the Council is authorized to consider a broad range of ''appropriate'' management schemes, including ''AFA-style'' cooperatives, which are specifically mentioned in the legislative history. . .

The Council considered the Congressional guidance in the development of the Program, particularly in the selection of specific years on which to base participation, and for the ''recognition'' of processor participation. While NMFS does not have specific authority under the Magnuson-Stevens Act to directly regulate on-shore groundfish processing activities, Section 802 requires NMFS to regulate on-shore processors under this Program.

Concurrent with the enactment of Public Law 108–199, Section 802, in 2004, industry representatives for harvesters and processors developed proposed management alternatives for the Program and submitted them to the Council for consideration. The Council and NMFS prepared an analytical document (EA/RIR/IRFA) for the Program that reviewed alternative methods to improve the economic efficiency in the Central GOA rockfish fisheries. These included (1) status quo management under the License Limitation Program (LLP); (2) the formation of harvester cooperatives each of which would receive an exclusive annual harvest privilege, with no

required linkage between the cooperative and a specific processor, and establishment of a limited number of eligible processors; and (3) the preferred alternative, the formation of harvester cooperatives each of which would receive an exclusive annual harvest privilege, with a required linkage between the cooperative and a qualified processor.

Currently, rockfish fisheries, and many other groundfish fisheries, are managed under the LLP. The LLP requires harvesters to possess an LLP license to participate in GOA groundfish fisheries, but does not provide specific exclusive harvest privileges to LLP holders. Harvesters with LLP licenses compete with each other for the total allowable catch (TAC) amounts annually specified for the fisheries. This competition creates economic inefficiencies. Harvesters increase the fishing capacity of their vessels to exceed that of other vessels resulting in an accelerated rate of fishing as fishermen race to harvest more fish than their competitors before TAC amounts or halibut mortality limits are reached and the fisheries are closed. Similarly, processors increase their processing capacity to outcompete other processors. These incentives to increase harvesting and processing capacity reduce the ability of harvesters and processors to extract additional value from the fishery products because the TACs are harvested and processed quickly. This rapid pace provides few opportunities to focus on quality or produce product forms that require additional time but yield greater value. Additionally, the rapid pace of the fishery makes management difficult.

Central GOA Rockfish Pilot Program Overview

A detailed overview of the Program is provided in the preamble to the proposed rule (71 FR 33040; June 6, 2006), and is not repeated here. The proposed rule is available via the internet and from NMFS (see **ADDRESSES**). The following section provides a brief overview of the Program.

Program development was initiated by trawl industry representatives, primarily from Kodiak, Alaska, in conjunction with catcher/processor representatives. They sought to improve the economic efficiency of the Central GOA rockfish fisheries by developing a program that establishes cooperatives that receive exclusive harvest privileges. These rockfish fisheries are almost exclusively harvested by trawl vessels in Federal waters.

The Program is authorized for two years, from January 1, 2007, until December 31, 2008. The Program provides exclusive harvesting and processing privileges for a specific set of rockfish species and for associated species harvested incidentally to those rockfish in the Central GOA–an area from 147° W. longitude to 159° W. longitude.

Exclusive harvesting and processing privileges are allocated under the Program for the primary rockfish species. The primary rockfish species are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. Secondary species are those species incidentally harvested during the harvest of primary rockfish species fisheries in the Central GOA. The secondary species for which exclusive harvesting and processing privileges are allocated include Pacific cod, rougheye rockfish, shortraker rockfish, sablefish, and thornyhead rockfish.

The Program allocates a portion of the total GOA halibut mortality limit annually specified under § 679.21 to participants based on historic halibut mortality rates in the primary rockfish species fisheries. Halibut is incidentally caught and killed in a number of the primary rockfish species and secondary species fisheries. Halibut caught by trawl gear is considered prohibited species catch (PSC) and may not be retained or sold commercially under regulations established under the authority of the Northern Pacific Halibut Act of 1982, or under regulations implementing the FMP at § 679.21. However, the Program provides participants a fixed amount of incidental halibut mortality through an allocation of halibut bycatch, specifically an allocation of the halibut mortality limit. To maintain consistency with terms currently used by NMFS and the fishing industry, this halibut mortality limit is called a halibut PSC limit.

The Program allocates harvest privileges to holders of LLP groundfish licenses with a history of legal Central GOA rockfish landings associated with those licenses. The allocation of legal landings to an LLP license allows the holder of that LLP license to participate in the Program and receive an exclusive harvest privilege under certain conditions. Specifically, the Program will:

1. Assign rockfish quota share (QS) for primary rockfish species to an LLP license with a trawl gear designation endorsed for the Central GOA. Under the Program, NMFS assigns Rockfish QS to an LLP license based on the legal landings of primary rockfish species associated with that LLP license. A person holding an LLP license can receive Rockfish QS if the LLP license had a history of primary rockfish species landings during a specific time period associated with the license and the person holding the LLP license meets other eligibility requirements. Once Rockfish QS is assigned to a specific LLP license it cannot be divided or transferred separately from that LLP license. On an annual basis, a LLP holder assigns the LLP license and Rockfish QS assigned to that LLP license for use in a rockfish cooperative, limited access fishery, or opt–out fishery.

2. Establish eligibility criteria for processors to have an exclusive privilege to receive and process primary rockfish species and secondary species allocated to harvesters in this Program.

3. Allow a person holding a LLP license with Rockfish QS to form a rockfish cooperative with other persons (i.e., harvesters) on an annual basis. Each rockfish cooperative receives an annual cooperative quota (CQ), which is an amount of primary rockfish species and secondary species dedicated to that rockfish cooperative for harvest in a given year. Each rockfish cooperative also receives an annual CQ that limits the amount of halibut PSC the cooperative can use while harvesting its primary rockfish species and secondary species CQ. The amount of CQ assigned to a cooperative is a portion of the annual TAC based on the sum of the Rockfish QS held by all the harvesters participating in the rockfish cooperative. A rockfish cooperative can form only under specific conditions. A person holding a LLP license that allows them to catch and process their catch at sea (catcher/processor vessel LLP license) can form a rockfish cooperative with other persons holding catcher/processor LLP licenses. A person holding a LLP license that allows them only to deliver their catch onshore (catcher vessel LLP license) can only form a rockfish cooperative with other persons holding catcher vessel LLP licenses and only in association with the processor to whom those persons have historically delivered most of their catch.

4. Allow rockfish cooperatives to transfer all or part of their CQ to other rockfish cooperatives, with some restrictions.

5. Provide an opportunity for a person not in a rockfish cooperative, but who holds an LLP license with Rockfish QS, to fish in a limited access fishery. NMFS will not allocate a specific amount of fish to a specific harvester in the limited access fishery. All harvesters in the

limited access fishery compete with all other such harvesters to catch the TAC assigned to the limited access fishery. The TAC assigned to the limited access fishery represents the total amount of fish assigned to all LLP licenses designated for the limited access fishery.

6. Establish a small entry level fishery for Central GOA rockfish for harvesters and processors not eligible to receive Rockfish QS under this Program.

7. Allow holders of catcher/processor LLP licenses to opt–out of the Program, with certain limitations.

8. Limit the ability of processors to process catch outside the communities in which they have traditionally processed primary rockfish species and associated secondary species.

9. Establish catch limits, commonly called ''sideboards,'' to limit the ability of participants eligible for this Program to harvest fish in fisheries other than the Central GOA rockfish fisheries. The Program provides certain economic advantages to harvesters. Harvesters could use this economic advantage to increase their participation in other fisheries, adversely affecting the participants in other fisheries. Sideboards limit the total amount of catch in other groundfish fisheries that can be taken by eligible harvesters to historic levels, including harvests made in the State of Alaska parallel groundfish fisheries. These are fisheries authorized by the State in its waters concurrent with the Federal fishery for which harvest amounts are deducted from the Federal TAC. Sideboards limit harvest in specific rockfish fisheries and the amount of halibut bycatch that can be used in certain flatfish fisheries. General sideboards apply to all vessels and LLP licenses with associated legal landings that can be used to generate Rockfish QS. Additionally, specific sideboards apply to certain catcher/processor and catcher vessels and LLP licenses.

10. Establish monitoring and enforcement provisions to ensure that harvesters maintain catches within annual allocations and do not exceed sideboard limits.

The Program provides greater security to harvesters in rockfish cooperatives by creating an exclusive harvest privilege. Although individual participants in the limited access fishery, opt–out fishery, and entry level fishery do not receive a guaranteed catch allocation, most harvesters are likely to participate in a rockfish cooperative that receives CQ. The Program is anticipated to result in a slower-paced fishery and enable the harvester to choose when to fish and therefore take advantage of market factors and avoid dangerous fishing conditions. The Program likely will provide greater stability for processors by spreading out production over a longer period. These changes will increase product quality in all sectors.

Cost Recovery and Fee Collection Provisions

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to ''collect a fee to recover the actual costs directly related to the management and enforcement of any...individual fishing quota program [or] community development quota program.'' Any individual fishing quota (IFQ) program must follow the statutory provisions set forth by section 304(d)(2) of the Magnuson-Stevens Act and other provisions of the Magnuson-Stevens Act related to cost recovery and fee collection for IFQ programs. The Central GOA rockfish Program does not issue IFQ under the same criteria as current IFQ programs (i.e., the Halibut and Sablefish IFQ Program). Thus, the establishment of a cost recovery Program is not included in the final rule. However, NMFS and NOAA General Counsel are reviewing the applicability of the Magnuson-Stevens Act provisions on cost recovery and fee collection to fishery cooperative allocations and other more general limited access privilege programs. If subsequent review of the Magnuson-Stevens Act indicates that a fee collection provision is required for cooperative allocation privilege programs, and the Rockfish Program specifically, NMFS would implement any required provision in a subsequent regulatory amendment to the Program.

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 on the proposed rule. All of the specific changes, and the reasons for making these changes, are contained under Response to Comments below. The changes are described by regulatory section.

In § 679.2, NMFS adopted a new term ''cooperative quota (CQ),'' to replace the term ''cooperative fishing quota (CQ)'' to reduce confusion with an acronym used by the Council in the GOA rationalization program under development. NMFS also clarified the definitions of an ''Rockfish entry level harvester,'' ''Rockfish entry level processor,'' ''Rockfish limited access fishery,'' and ''Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program.'' Last, NMFS added the terms ''aggregate forage fish,'' ''skates,'' and ''other rockfish'' to the group of species defined under ''Non-allocated secondary species.''

In § 679.4, NMFS clarified the circumstances under which a CQ permit assigned to a rockfish cooperative is valid, and the effect on a CQ permit once NMFS has approved a rockfish cooperative's termination of fishing declaration.

In § 679.5, NMFS made minor clarifications to the rockfish cooperative catch report requirement, and deleted a reference to a process for amending a CQ permit to select vessels that are eligible to fish under the CQ permit. NMFS also established a more flexible rockfish reporting system that allows a cooperative's designated representative to determine how and when vessels will fish under a CQ permit. Authorized cooperative representatives could ''check-in'' a vessel when it is fishing under a CQ permit during the rockfish cooperative fishing year, and ''check-out'' vessels no longer fishing under its CQ permit. For administrative efficiency, NMFS will constrain the number of times a vessel may check-in and check-out based on the number of LLP licenses assigned to that cooperative.

In § 679.7 NMFS made several modifications. NMFS clarified that an eligible rockfish harvester cannot assign their LLP license to more than one rockfish fishery in a year. NMFS also clarified that an eligible rockfish harvester or processor is prohibited from participating in the entry level fishery, detailed the prohibitions that apply for monitoring provisions in the opt–out fishery, and established provisions to complement a rockfish cooperative's designated representative ability to submit vessel check-in and check-out reports to designate fishing under a CQ permit. NMFS deleted the prohibition requiring retention of groundfish harvested while fishing under a sideboard limit. NMFS deleted prohibitions applicable to rockfish observer coverage and the catch monitoring control plan (CMCP) for rockfish entry level processors, and the prohibition on having primary rockfish species harvested under a CQ permit and rockfish incidentally retained in non-Program vessels aboard a catcher/processor vessel at the same time.

In § 679.21, NMFS inserted provisions to allow the reapportionment of halibut PSC CQ that is unused by rockfish cooperatives to the trawl sector after rockfish cooperatives have completed fishing.

In § 679.28, NMFS clarified that entry level processors are not required to have a CMCP.

In § 679.50, NMFS reduced observer coverage requirements for catcher/processor vessels fishing in the opt–out fishery, and clarified how observer coverage required under the Program affects processor facility observer coverage requirements in other non-Program groundfish fisheries.

In § 679.80, NMFS clarified that an LLP license is eligible to be assigned Rockfish QS only if a landing was made during the primary rockfish species qualifying periods in which rockfish were targeted (i.e., primary rockfish species were the predominant groundfish catch). Similarly, secondary species and halibut PSC is assigned to the catcher/processor or catcher vessel sector based on harvests or halibut PSC use attributed to specific landings in which primary rockfish species were targeted. Further, NMFS clarified that an onshore processing facility must be closed before the processing history associated with that facility may be transferred. NMFS made minor clarifications in the formula for determining a legal rockfish landing.

In § 679.81, NMFS made several modifications and changes in the process and formulas for allocating Rockfish QS among fishery participants, and the allocation of TAC for secondary species and halibut PSC between the catcher vessel and catcher/processor sectors. These changes clarified proposed regulatory text. NMFS extended the due date for the application to join a rockfish cooperative, limited access fishery, or opt–out fishery from December 1 of the year prior to fishing to March 1 of the year in which fishing occurs. NMFS clarified that CQ inter-cooperative transfers must be approved by the eligible rockfish processor with whom that rockfish cooperative is associated. NMFS made several clarifications on the process of forming a rockfish cooperative, specifically to requirements establishing the amount of Rockfish QS that must be assigned to a rockfish cooperative before it can form. NMFS specified the associations that can form between eligible rockfish harvesters and processors. NMFS deleted provisions concerning the transfer of processor eligibility, requirements on providing corporate ownership information on inter-cooperative CQ transfer forms, and provisions requiring modification of the CQ permit to add or delete the vessels fishing under that permit.

In § 679.82, NMFS clarified the calculation of use caps applicable to catcher vessel cooperatives and eligible rockfish processors; how transfers of CQ are attributed to eligible rockfish harvesters in a rockfish cooperative; and which fisheries are subject to closure once a sideboard limit is reached. NMFS inserted the BSAI Pacific cod sideboard limit that applies to the catcher vessel sector in a table with other sideboard limited species and deleted redundant text. NMFS established the halibut PSC sideboard limit as a use cap applying to the entire GOA, not to specific management areas in the GOA. Last, NMFS clarified the method for calculating the amount of groundfish and halibut PSC sideboard limits that are attributed to rockfish cooperatives, the rockfish limited access fishery, and catcher/processor sector opt–out fishery.

In § 679.84, NMFS made several modifications that designate the specific catch monitoring requirements that apply to catcher/processor vessels assigned to the opt–out fishery. Specifically, NMFS relieved requirements for scales and an observer sampling station. NMFS also clarified that groundfish harvested or halibut PSC used under a CQ permit is not debited against groundfish or halibut PSC sideboard limits in July.

In Table 28 to part 679, NMFS corrected the closure date for primary rockfish species in 1999. In Table 30 to part 679, NMFS corrected typographic errors in the maximum retainable amount (MRA) percentages for other species, clarified the rockfish fisheries to which the MRA percentages in this table apply, and added an MRA for thornyhead rockfish in the rockfish limited access fishery.

Response to Comments

Comment 1: The use of the CFQ acronym for ''cooperative fishing quota'' is likely to be very confusing to the public because several Council actions under consideration refer to ''community fisheries quota'' as ''CFQs.''

Response: NMFS agrees and has changed Cooperative Fishing Quota (CFQ) to Cooperative Quota (CQ) to avoid confusion that may result from the use of the same abbreviation as has been used to describe''community fishing quotas.''

Comment 2: Modify the definition in § 679.2 of ''Eligible rockfish entry level harvester'' to limit eligibility to harvesters not eligible to enter a rockfish cooperative.

Response: NMFS agrees and has modified the definition of an eligible entry level rockfish harvester at § 679.2 and in § 679.80(b)(2) to explicitly exclude eligible rockfish harvesters.

Comment 3: Modify the definition in § 679.2 of ''Eligible rockfish entry level processor'' to limit eligibility to processors not eligible to associate with a rockfish cooperative.

Response: NMFS agrees and has modified the definition of an eligible entry level rockfish processor in § 679.2 to explicitly exclude eligible rockfish processors.

Comment 4: Include skates, aggregate forage fish, and other rockfish in the definition in § 679.2 of ''Non-allocated species.''

Response: NMFS agrees and has changed the definition of ''Rockfish Program species'' to include these species. These species are not specifically allocated under the Program and should be included in the definition of non-allocated species.

Comment 5: The definition of ''Sideboard limit for purposes of the Rockfish Program'' in § 679.2 includes primary rockfish, Pacific cod, and halibut. Is Pacific cod included because of the sideboard limit for the catcher vessel sector in the BSAI in July?

Response: Yes. BSAI Pacific cod is included in the definition of Sideboard limit for purposes of the Rockfish Program under § 679.2 because it is subject to a sideboard limit in the catcher vessel sector.

Comment 6: In the definition in § 679.2 of ''Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program,'' NMFS uses the term ''entity'' to define a ''person.'' This creates a circular definition in the rule. ''Person'' is currently defined in § 679.2 as an individual, corporation, or other entity. The new definition of ''entity'' includes ''persons.''

Response: NMFS agrees. Although the existing definition of an ''entity'' contained within the definition of ''Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program'' effectively includes the definition of a ''person'' as that term is currently defined in § 679.2, it may reduce confusion to use the term ''person'' rather than ''entity.'' NMFS notes that because the current definition of ''person'' in § 679.2 includes an ''entity,'' any of the descriptions of an ''entity'' provided in the proposed rule, specifically an 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, is presumed to be included in the existing definition of a ''person'' in § 679.2.

Comment 7: It has always been the vision of the Kodiak rockfish fishery participants that the linkages between eligible rockfish harvesters and processors may need to be modified somewhat. Thus, the rule needs to incorporate adequate flexibility to accommodate transfers of LLPs between cooperatives during initial cooperative formation and the time period afterwards, on the condition that the affiliated processor and the harvester members of the cooperative agree.

Response: The linkages between the legal rockfish landings attributed to an LLP license to a specific eligible rockfish processor were specifically recommended by the Council. However, requiring a vessel to deliver to a specific processor when fishing under a CQ permit based on the LLP license used by that vessel may limit vessel operators from coordinating with specific processors.

The Program does not modify current provisions for the transfer of LLP licenses, nor were such provisions recommended by the Council. LLP license holders may continue to transfer LLP licenses to a new LLP holder under § 679.4(k)(7). Rockfish cooperatives do not hold LLP licenses, eligible rockfish harvesters do. LLP licenses are not transferred among rockfish cooperatives and transfers are not subject to approval by an eligible rockfish processor. However, the regulations do not require an eligible rockfish harvester to assign a vessel to the same rockfish cooperative as the LLP license.

For example, if an LLP license holder wished to assign the Rockfish QS to a specific rockfish cooperative, that eligible rockfish harvester would submit an application for CQ as described in § 679.81(e)(4). If that same eligible rockfish harvester wished to have his vessel named on a different LLP license as one of the vessels eligible to harvest fish under the CQ for another cooperative, that eligible rockfish harvester could list the vessel under a CQ permit for another cooperative and deliver catch harvested by that vessel to a different eligible rockfish processor. The vessel would continue to be subject to existing requirements to maintain a valid LLP license onboard the vessel. This arrangement would allow eligible rockfish harvesters to separate vessel operations from the rockfish cooperative to which an LLP license is assigned. This provides considerable flexibility for vessel operators.

Comment 8: Paragraph (n) of § 679.4 suggests that quota is for ''primary or secondary species'' and ''halibut PSC'' and that the permit is no longer valid if the primary or secondary species or PSC is fully fished. Modify the section in two ways. First, if quota is issued it will always be for ''primary species, secondary species, and halibut PSC.'' Under no circumstances will quota be issued for one of these without the other (modify (n)(1)(i)). And, second, the permit should remain valid until all amounts of all species are fully fished. Quotas are tradable and any amount should remain usable, if it is not fished (modify (n)(1)(ii)(B) and (C)).

Response: NMFS agrees. The intent of this provision is to ensure that a CQ permit is valid until the amounts of primary species, secondary species, and halibut PSC have been fully used by the rockfish cooperative holding that CQ permit. The regulations at § 679.4(n)(1)(ii)(B) have been modified to more clearly state that a CQ permit is valid until all amounts of all primary species, secondary species, and halibut PSC CQ have been fully used. This modification ensures that the CQ permit for all species is not invalidated because the CQ amount for one species has been reached. This modification does not relieve restrictions at § 679.7(n)(7)(i) that prohibit a rockfish cooperative from exceeding its CQ amount for any species. Section 679.4(n)(1)(ii)(C) has been removed and the contents of § 679.4(n)(1)(ii)(D) have been combined with § 679.4(n)(1)(ii)(B). Sections 679.4(n)(1)(ii)(D) through (G) have been renumbered accordingly as § 679.4(n)(1)(ii)(C) through (E).

Comment 9: Section 679.4(n)(2) allows a rockfish cooperative to extinguish its CQ permit by submitting a declaration of termination of fishing form to NMFS, which has to be reviewed and approved. How long will this take and what happens in the meanwhile? If the CQ permit is still active, do the sideboard restrictions and monitoring and enforcement requirements still apply? Please expedite this process so vessels are not stuck with unnecessary limits when they are done with the cooperative fishery?

Response: NMFS intends to process all termination of fishing declarations in a timely manner. Processing times for the declarations will be short, several days at the most. Until the application is approved, the vessel fishing under a CQ permit will continue to be subject to the sideboards and necessary monitoring and enforcement requirements. As is noted under the response to Comment 50, cooperative representatives may choose to check a vessel out at the end of a fishing trip. Once a vessel is checked out, if no other vessel is checked in, vessels assigned to a rockfish cooperative would not be subject to monitoring and enforcement requirements that apply while fishing under a CQ permit. However, those vessels would still be subject to monitoring and enforcement provisions applicable for sideboard management in July. Cooperative managers may wish to ensure that all vessels assigned to that rockfish cooperative are checked out prior to submitting the termination of fishing declaration.

Comment 10: Section 679.4(n)(2)(v) notes that all CQ on the permit is set to zero when the termination of fishing declaration is approved. If this occurs before the residual CQ is transferred, does the rockfish cooperative lose their CQ allocation?

Response: Yes. If a rockfish cooperative submits and NMFS approves its declaration to terminate fishing prior to NMFS approving an inter-cooperative transfer submitted by that rockfish cooperative, the CQ amount remaining is extinguished. If a rockfish cooperative wishes to transfer CQ, it should submit its transfer application prior to its declaration to terminate fishing.

Comment 11: Section 679.5(r)(7)(i) incorrectly cites § 679.4(m). This citation refers to the Aleutian Island pollock fishery.

Response: NMFS agrees and has corrected the citation in § 679.5(r)(7)(i) from § 679.4(m) to § 679.4(n) to refer to the Program.

Comment 12: Section 679.5(r)(7)(i) requires all vessel operators under the Program to file rockfish cooperative catch reports. This provision should apply only to vessels assigned to rockfish cooperatives.

Response: NMFS agrees and has modified § 679.5(r)(7)(i) to clearly indicate that only vessel operators whose vessels are designated to receive catch under a CQ permit are required to submit a rockfish cooperative catch report.

Comment 13: Section 679.5(r)(8)(ii)(B) notes that annual rockfish cooperative reports are due by December 15th. Is the time estimated for completing the report consistent with AFA and Crab Rationalization Program requirements?

Response: Yes, the time required to complete the annual rockfish cooperative report is similar to that under the AFA and Crab Rationalization Program. The information collected in the report is similar to that required under the AFA and Crab Rationalization Program annual cooperative report.

Comment 14: Section 679.7(n)(1)(iv) requires full retention of any groundfish caught by a vessel that is subject to a sideboard limit as described at § 679.82(d) through (h), as applicable, if

directed fishing for that groundfish species in that area is authorized. Does this require full retention of sideboarded species? Why is this broad statement even in the rule?

Response: The intent of this provision was to ensure that groundfish subject to a sideboard limit under § 679.82(d) through (h) are retained and counted against the sideboard limit. The groundfish subject to a sideboard limit are listed in § 679.82(d)(6) and include rockfish species in the Western GOA and West Yakutat District, and Pacific cod in the BSAI for vessels in the catcher vessel sector. Flatfish that are harvested in the GOA are not subject to a groundfish limit; rather, the harvest of flatfish is restricted by halibut PSC sideboard limits established under § 679.82(d)(8). This provision does not require vessels to retain all flatfish harvested during July.

This provision was intended to ensure that NMFS accurately accounts for the total catch in a sideboard limited groundfish fishery. Full retention would ensure that all catch is fully counted. However, NMFS can obtain information from groundfish discard rates using observer data. All vessels subject to sideboard limits in July will have observer coverage. This observer coverage is sufficient to monitor any amount of discards of groundfish and include discard estimates in the total harvest of a groundfish species subject to a sideboard limit. Thus, NMFS is not requiring the full retention of groundfish harvested that are subject to a sideboard limit by deleting the prohibition in § 679.7(n)(1)(iv) and renumbering § 679.7(n)(1)(v) through § 679.7(n)(1)(vii) as § 679.7(n)(1)(iv) through § 679.7(n)(1)(vi).

Comment 15: Section 679.7(n)(1)(iv) states that vessel operators must retain any groundfish caught by a vessel that is subject to a sideboard limit as described § 679.81(d) through (h) if directed fishing for that groundfish species in that area is authorized. It is unclear in this provision whether retention is required only for GOA rockfish species and BSAI Pacific cod which are catch side-boarded, or if this provision also applies to flatfish species since they are side-boarded via deep and shallow halibut sideboards caps.

Response: NMFS has addressed this comment in the response to Comment 14.

Comment 16: Section 679.7(n)(1)(v) prohibits use of an LLP license in ''any fishery'' other than the rockfish fishery to which it is assigned. To the extent that this prevents a rockfish vessel from fishing other species, this is inconsistent with the analysis. The analysis suggests that trip-by-trip declarations are made to ensure proper accounting of catch and adequate monitoring. Declared rockfish trips would be subject to different accounting and monitoring.

Response: NMFS agrees in part. NMFS has modified this prohibition to clearly state that an LLP license may not be used in ''any Rockfish Program fishery'' other than the Rockfish Program fishery to which that LLP license was originally assigned. The intent of this prohibition was not to limit the ability of Program participants from engaging in non-Program fisheries. This modification makes clear the intent of this provision is to limit the ability of an eligible rockfish harvester to use his LLP license to fish in more than one Rockfish Program fishery in a calendar year (i.e., fishing under a CQ permit for a rockfish cooperative, limited access fishery, opt–out fishery, entry level trawl fishery, or entry level longline gear fishery). Fishing in more than one of these fisheries would undermine the ability of NMFS to effectively manage cooperatives and the limited access fishery because Rockfish QS must be assigned to specific fisheries at the start of each fishing season to properly allocate fishery catch limits.

The portion of the comment relating to catch accounting of vessels on a trip-by-trip basis is addressed in response to Comment 50.

Comment 17: Section 679.7(n)(1)(v) appears to prevent a non-trawl entry level vessel from fishing in fisheries other than the Rockfish Program fishery from January 1 until the entry level fishery closes (possibly in November). This provision will make the entry level fishery impracticable for all non-trawl vessels. Managers should be able to account catch against the non-trawl entry level TAC in a manner similar to that currently used. Additionally, § 679.7(n)(1)(v) seems overly broad with respect to trawl entry level and trawl limited access vessels. Those fisheries open in May and July respectively and will likely close shortly after opening. This provision seems to limit the ability of those vessels to participate in any other fishery during the year. In addition, a vessel should be able to withdraw from these fisheries at any time with notice to the agency.

Response: Under the clarification made in response to Comment 16, NMFS will only require that if a vessel is directed fishing in a specific Rockfish Program fishery as defined in § 679.2 (e.g., entry level longline gear fishery), it cannot directed fish in another Rockfish Program fishery (e.g., entry level trawl fishery) in the same calendar year.

Comment 18: Paragraph (n) of § 679.7 does not appear to be a clear prohibition on eligible harvesters participating in the entry level fishery, or eligible processors taking deliveries from the entry level fishery. The provision in § 679.7(n)(5) suggests that eligible processors can take deliveries from the entry level fishery. Only ineligible processors can take entry level deliveries. These prohibitions could be included here.

Response: NMFS agrees. Although the definitions of an ''eligible entry level rockfish harvester'' and ''eligible entry level rockfish processor'' in § 679.2 have been modified to more explicitly exclude ''eligible rockfish harvesters'' and ''eligible rockfish processors,'' respectively, from participating in the entry level fishery as detailed in § 679.83, a prohibition would further clarify this issue. This prohibition would also be consistent with the description of the eligibility to participate in the entry level Rockfish Program fishery in the preamble to the proposed rule at 71 FR 33064, which states that ''the Program would establish an entry level fishery for all persons who are not eligible rockfish harvesters or processors.''

These new prohibitions are inserted in § 679.7(n)(1)(vi) and (vii) and state that it is prohibited to receive any primary rockfish species harvested in the entry level rockfish fishery if that person is an eligible rockfish processor, or harvest any primary rockfish species in the entry level rockfish fishery if that person is an eligible rockfish harvester.

Comment 19: Section 679.7(n)(2)(ii) requires a catcher/processor vessel in the limited access fishery to meet the all monitoring and enforcement requirements from July 1 until directed fishing for all primary rockfish targets for the limited access fishery are closed. Catcher/processor vessels with less than 5 percent of the aggregate Pacific ocean perch Rockfish QS allocation can fish in the Bering Sea or in other GOA fisheries. Those catcher/processor vessels should be able to forego the monitoring and enforcement requirements if they are not fishing in the Program.

Response: Nothing in the FMP or Council motion recommending this action indicates that catcher/processor vessels using LLP licenses with less than 5 percent of the Pacific ocean perch Rockfish QS in the catcher/processor sector are relieved of the monitoring and enforcement requirements that apply to other catcher/processor vessels. If a catcher/processor vessel is fishing in the limited access fishery, or fishing in July and

subject to a sideboard limit, that vessel is subject to the monitoring and enforcement requirements established for that sector (See § 679.82(d) through (h)).

Comment 20: Section 679.7(n)(7)(i) prohibits exceeding the amount of CQ assigned to a rockfish cooperative. Can the CQ amount assigned to a rockfish cooperative be amended by a documented transfer from another rockfish cooperative?

Response: Yes. Rockfish cooperatives can increase or decrease the amount of CQ held by engaging in inter-cooperative transfers. See § 679.81(i)(4)(iii) for additional details.

Comment 21: Paragraphs (n)(7)(iv) and (vi) of § 679.7 prohibit fishing with a CQ permit if there are non-CQ fish on board. This means a catcher/processor will have to offload prior to entering a Rockfish Program fishery, and prior to completing fishing under a Rockfish Program fishery and beginning fishing in a non-Program groundfish fishery. If a vessel chooses to leave and enter a Rockfish Program fishery multiple times it would be forced to offload repeatedly. Offloads require several days away from the grounds and several thousand dollars worth of fuel. The level of monitoring and enforcement required is more than adequate to determine what fish was landed while in the Program. Requiring the offload is expensive and unnecessary.

Response: NMFS agrees, § 679.7(n)(7)(iv) is modified to apply only to catcher vessels, and § 679.7(n)(7)(vi) is removed. This effectively authorizes a catcher/processor vessel to have species harvested under a CQ permit and those not harvested under a CQ permit onboard the vessel at the same time. Therefore, if a catcher/processor vessel checked-out while at sea at the end of a week-ending date, it would not need to offload prior to fishing in other non-Program fisheries. This comment is more fully addressed in response to Comment 50.

Comment 22: There should be a mechanism to make halibut PSC CQ unused by rockfish cooperatives available to other trawl target fisheries. Halibut PSC could be released back to the open access trawl fisheries either when the rockfish fishery closes on November 15, or when the CQ permit is revoked through an approved rockfish cooperative termination of fishing declaration. If the remaining halibut PSC were made available to the other trawl target fisheries, it would offer an incentive for the rockfish cooperatives to work toward minimizing halibut PSC CQ use and bearing the additional cost that comes with these bycatch reduction efforts.

Response: NMFS agrees. If a rockfish cooperative has not fully used its allocation of halibut PSC CQ in a year, or if that rockfish cooperative submits a termination of fishing declaration, that portion of the halibut PSC not used in the Program could be reallocated for use in other non-rockfish fisheries. This is consistent with the overall goals of halibut PSC management to apportion halibut by gear type. To facilitate the management of this ''roll-over'' NMFS will allow halibut PSC remaining after November 15, or after a cooperative has submitted a declaration to terminate fishing, to be reallocated to the final seasonal apportionment of halibut PSC for use by trawl gear in the GOA. Currently, the final season for halibut PSC apportionment begins on October 1. NMFS will review termination of fishing declarations and allow halibut PSC remaining to be redistributed for general use beginning on October 1. After November 15, any remaining halibut PSC allocated to rockfish cooperatives will be available for general use by vessels using trawl gear. NMFS has modified regulations at § 679.21(d)(5)(iii) to allow this reapportionment of unused halibut PSC, and has modified regulations at § 679.4(n)(2)(v) to clarify that once a rockfish cooperative termination of fishing declaration has been submitted, the halibut PSC that was allocated as CQ, is reapportioned to the trawl sector according the provisions of the new § 679.21(d)(5)(iii)(B).

Comment 23: The title of § 679.50 states that the Groundfish Observer Program is applicable through December 31, 2007. Is this the current expiration date of the Observer Program?

Response: At its June, 2006 meeting, the Council recommended removing the December 31, 2007, expiration date. NMFS currently is drafting a proposed rule that would remove this expiration date. That rulemaking will be part of a separate action.

Comment 24: There are several questions regarding the new requirements for plant observers:

Comment 24–1: When are an observer's duties considered complete?

Response 24–1: Daily observer coverage begins when the first rockfish delivery occurs and ends 12 hours later regardless of the nature of the deliveries (i.e., Program or non-Program deliveries) during that period. Program deliveries after that 12 hour time in the calendar day will require a second observer. Other non-Program deliveries may occur after this 12 hour period has lapsed and the observer may decide to sample those non-Program deliveries. This clarification does not modify the existing regulations.

Comment 24–2: Present regulations require specific coverage levels based on processing volumes. For example, if a plant processes less than 500 mt of groundfish in a month, then no observer coverage is required. We are assuming that rockfish deliveries would not count towards the processing volume level and therefore would not trigger observer requirements for other groundfish deliveries. We also assume that rockfish observer coverage would not count towards meeting the observer requirements for other groundfish delivery requirements. Is this the agency intent?

Response 24–2: The intent of the regulations is to ensure that non-Program deliveries count for non-Program coverage, but deliveries of Program groundfish would not be counted for purposes of meeting minimum observer coverage requirements for non-Program groundfish. Any non-Program deliveries that occur when the Program observer is present at that processing facility during that calendar day will be counted towards the non-Program observer coverage requirements for that month. NMFS has clarified the provisions of § 679.50(d)(7)(iv) to define the accounting of observer coverage.

Comment 24–3: There may be times that a processor will not need a rockfish observer for an entire 12 hour period. Can the processor use this observer for other groundfish deliveries if the 12 hour limit has not been reached?

Response 24–3: If a Program observer is not needed to observe Program deliveries during an entire 12 hour period, that processor may use this observer for other non-Program groundfish deliveries. During periods when an observer is monitoring both Program and non-Program deliveries, the observer coverage on non-Program catch may apply toward their observer requirements.

Comment 24–4: Is it possible that the processor can use an observer for monitoring Program deliveries and after 12 hours use that same observer for other groundfish observer requirements?

Response 24–4: Yes. At the end of a 12 hour period during a calendar day, a Program observer cannot observe any more Program deliveries until the next calendar day. However, that observer could monitor deliveries in other non-Program groundfish fisheries subject to existing observer coverage requirements.

Comment 24–5: Is it the intent of the observer program to use vessel observers to monitor the entire vessel offload?

Response 24–5: No. Program observers onboard vessels are limited to collating their at-sea sample data and transmitting these data to NMFS from shore.

Comment 25: While industry understands that monitoring and enforcement of a quota share program is important for managers and conservation, the 100 percent observer coverage requirement for the vessels creates a large financial burden for them. The Program is complicated because of the number of QS species required to accommodate the mixed nature of the fishery. However, Program observer requirements are the highest standard ever imposed on a small catcher vessel fleet in the North Pacific and are more restrictive than the requirements for the halibut IFQ fleet and the AFA pollock fleet. Both industry and managers must develop creative solutions that meets monitoring and enforcement requirements but that are affordable for industry participants. The Program offers the appropriate environment to experiment with creative solutions to find a way to reduce the monitoring and enforcement costs for this and other quota programs.

Response: NMFS agrees that the continued investigation of innovative solutions to the monitoring and enforcement issues associated with a complex quota-based program and suite of species such as rockfish is critical and we will continue to actively work with the fishing industry to investigate new approaches. However, at this time no feasible alternative to 100 percent observer coverage exists that can ensure that all catch is accounted for against the quotas. NMFS agrees that monitoring requirements, including observer coverage levels proposed for the Program, are more stringent than those imposed on either the halibut and sablefish IFQ fleets or the AFA pollock fleet. However, NMFS notes that neither of these programs are multispecies fisheries, nor is the ability to fully harvest quotas potentially constrained by the availability of halibut PSC. This constraint distinguishes the Program from all other quota-type programs developed to date and results in the need for the more rigorous monitoring and enforcement standards than have been imposed in previous programs.

Comment 26: The rockfish fishery is probably one of the most complicated fisheries to observe for species identification and catch monitoring. We believe that lead level-two observers should be required for the shoreside vessels and processors, as is required for the catcher processor fleet.

Response: NMFS disagrees. Level-two certified observers are trained in at-sea sample station requirements, at-sea motion compensated scale testing, and observer duties at-sea under the AFA and CDQ Program. Training for level-two observers does not include new duties for shoreside vessel and plant observers under the Program. Any shoreside duties for level-two observers are specific to CDQ Program requirements. Species identification and sampling methodologies for the shoreside component are covered during the three week training course that all certified observers receive.

Comment 27: The preamble to the proposed rule (71 FR 33044) on pages 33065 and 33068, state that the observer coverage requirements for shoreside processors apply to those processors taking rockfish deliveries from all categories of harvesters, including those in the entry level fishery. However, the proposed modifications to § 679.50(c)(7)(ii) of the proposed rule listing the catcher vessel categories subject to additional shoreside processor observer coverage requirements does not include entry level harvesters. Entry level processors taking deliveries from entry level harvesters, particularly small longline gear vessels, should not be subject to these observer requirements added by the implementation of a Program for which they are not eligible.

Response: NMFS agrees. Entry level processors are expected to only take a few deliveries that result from a modest amount of catch, and NMFS expects that current monitoring requirements will be sufficient to meet data needs. The page of the proposed rule preamble referenced in the comment (71 FR 33065) is inconsistent with the requirements of § 679.50(d)(7). Additionally, NMFS notes that without a dedicated rockfish observer present to monitor the sorting and weighing at the plant, a CMCP is not a functional monitoring tool. Therefore, NMFS removed the provisions at § 679.84(e) that require a CMCP for an rockfish entry level processor. NMFS modified § 679.7(n)(6) to limit this provision to catcher vessels delivering catch under a CQ permit, or in the rockfish limited access fishery. NMFS notes that these changes do not relieve processing facilities receiving entry level fishery catch from other monitoring and enforcement requirements that may apply to those facilities while receiving or processing fish in other fisheries.

Comment 28: Section 679.80(b)(1)(i)(B) of the proposed rule provides that a landing of a primary species during a directed fishery opening qualifies an LLP license for the Program. The provision should provide that an LLP license is qualified to participate in the Program and receive Rockfish QS only if it has a targeted legal rockfish landing during a directed fishery, where a legal rockfish landing is considered to be targeted only if the catch of the primary species was the predominant catch in that trip.

Response: NMFS agrees. Clarifying that an LLP license is eligible to participate in the Program and receive Rockfish QS only if primary rockfish species were the predominant catch in at least one legal rockfish landing will reduce any potential claims for assigning Rockfish QS to LLP licenses based on legal rockfish landings that are attributed to incidental harvest in other groundfish fisheries. This is also consistent with the intent of the Council as described in Section 3.3.1.1 of the Council motion recommending this action. Section 3.3.1.1 indicates that targeted catch should be used to determine whether an LLP license is eligible to be used to participate in the Program. NMFS has modified § 679.80(b)(1)(i)(B) to require that an LLP license is eligible to qualify to receive Rockfish QS only if it is assigned a legal rockfish landing of any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish according to the official rockfish record.

NMFS modified the criteria for establishing eligibility to participate in the entry–level fishery under § 679.80(b)(2)(iii) to indicate that a person cannot participate in the entry level fishery if that person holds an LLP license with landings attributed to it that reflect a directed rockfish target fishery and that person is otherwise eligible to receive Rockfish QS.

This comment also indirectly addresses the allocation of secondary species and halibut PSC between the catcher/processor and catcher vessel sector by noting that targeted catch is the basis for determining eligibility to participate in the Program and receive allocations. NMFS has modified § 679.81(b)(2) and (b)(3) to allocate an amount of secondary species to the catcher/processor and catcher vessel sectors based on secondary species that were harvested during the directed fishing seasons for primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish. This modification is consistent with the Section 3.3.1.2 of the Council motion

recommending this action which states that ''secondary species history is allocated based on retained catch over retained catch while targeting the primary rockfish species.'' This clarification also is consistent with data presented in Table 27 in the final EA/RIR prepared for this action.

Similarly, NMFS has modified § 679.81(c)(2) and (c)(4) to allocate an amount of halibut PSC to the catcher/processor and catcher vessel sectors based on halibut PSC that was used during the directed fishing seasons for primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish. This modification is consistent with the Section 3.3.1.3 of the Council motion recommending this action which states that halibut PSC allocations between the catcher/processor and catcher vessel sector ''will be based on historic average usage, calculated by dividing the total number of metric tons of halibut mortality in the CGOA rockfish target fisheries.'' This clarification also is consistent with data presented in Table 28 in the final EA/RIR prepared for this action.

Comment 29: Paragraphs (b)(3) through (b)(5) of § 679.80 should note that the assignment of legal rockfish landings for secondary species to the sector occurs only if the LLP license is eligible for the Program.

Response: NMFS agrees. NMFS would only assign legal landings to an LLP license if that LLP license was eligible to be used in the Program under the criteria listed in § 679.80(b)(1). These criteria prevent NMFS from assigning a legal landing to an LLP license that is not held by an eligible person. For clarity, NMFS notes that an LLP license must be eligible to have legal landings attributed to it under § 679.80(b)(3), (b)(4)(ii), and (b)(5)(ii). The allocation of secondary species to the catcher/processor and catcher vessel sector is discussed further in the response to Comment 28.

Comment 30: Paragraph (c) of § 679.80 should more clearly note that processing history transfers that are separate from the plant ownership only apply if the facility has closed and the purchaser remains in the same community. Paragraph (d)(4)(ii) of § 679.80 should limit the transfer of processing history. In general, a processing facility is eligible if it meets the processing criteria and its processing history remains attached to its originating facility, unless the facility is closed. If a facility is closed, the history can only be transferred to a facility in the community.

Response: NMFS agrees. Section 5.4 of the Council motion notes that ''[i]f a processing facility has closed down and another processing facility has acquired that processing history through purchase, the history belongs to the facility that purchased that history.''

The Council's intent is best met by limiting transfers of processing history to two cases: one in which the processing history can only be transferred with the sale of the processing facility at which that catch history was earned; and the other is to limit the transfer of processing history separate from the sale of the processing facility at which that history was earned only in the specific case in which the eligible processing facility at which that processing history was earned is closed. NMFS defines a ''closed'' facility as a facility which has not been issued a Federal Processor Permit (FPP). An FPP is required for any groundfish processing, and NMFS can easily ascertain whether a facility was operating by reviewing its records. Other definitions of a ''closed'' facility may be subject to greater uncertainty and interpretation and could create additional administrative burdens. NMFS clarifies that a facility remains closed if it did not receive an FPP at the time that the processing history had been transferred to another person through the express terms of a written contract.

NMFS has modified § 679.80(c)(2)(ii) to note that processing history, and therefore eligibility to participate as an eligible rockfish processor, must have been transferred by a clear and unambiguous contract, and that the processor from which this history was transferred must be closed. NMFS has modified § 679.80(d)(4)(ii) to note that any transfer of processing history must meet the requirements described at § 679.80(c)(2)(ii). Once transferred, any processing history, and resulting status as an eligible rockfish processor, must be used to receive and process groundfish under a CQ permit, or in the limited access fishery, in the community where the processing history was originally earned (see provisions at § 679.7(n)(6)). That community is designated on the application to participate in the Rockfish Program (see § 679.80(e)(4)(ii)(C)).

Comment 31: For a processor to qualify for a processing permit they must have processed at least 250 mt of primary rockfish species for at least four years from 1996 through 2000. Additionally, a processor would determine the four of five years from 1996 through 2000 used to determine which LLP holders may form a rockfish cooperative in association with that processor. The four qualifying years for the permit could be different from the processing years chosen by the processor to determine fleet associations. The Council intended to provide processors the flexibility to use two different sets of years; one set of years to qualify as an eligible rockfish processor, and one set of years to determine which LLP licences may form rockfish cooperatives in association with that processor.

Response: NMFS will compute whether a processor is an eligible rockfish processor by determining whether the minimum processing tonnage requirement is met in each of any four of five years from 1996 through 2000 as described under § 679.80(c)(1). This decision is not subject to the discretion of the eligible rockfish processor; either the minimum processing requirements are met or they are not. Once NMFS determines that a processor meets these requirements, the eligible rockfish processor may select the four of five years from 1996 through 2000 to establish how that processor may associate with a catcher vessel rockfish cooperative. These years may differ from those used by NMFS to determine the processor's eligibility to participate in the Program. The rule has not been modified.

Comment 32: In § 679.80 paragraph (f)(3)(ii)(E) uses the phrase ''multiplying the Percentage of the Total of the Total'' which appears to be a typographic error.

Response: NMFS agrees and has removed the second phrase ''of the Total.'' This is a minor typographical error that does not substantively affect this provision.

Comment 33: Paragraph (f)(3)(ii) of § 679.80 refers to the calculation of Rockfish QS based on ''a percentage of legal rockfish landings' in that sector''. This section should state the ''Rockfish QS for a sector'' is based on a percentage of legal rockfish landings in that sector.

Response: NMFS agrees. NMFS has modified § 679.80(f)(3)(ii) to more clearly state that the amount of Rockfish QS issued for a sector is based on the percentage of legal landings of eligible harvesters in that sector. The provision that follows at § 679.80(f)(3)(iii) describes the process of deriving Rockfish QS from each eligible LLP license and allocating Rockfish QS to that sector.

Comment 34: I do not understand the calculation in § 679.80(f)(3)(iii)(F). Should the total amount of Rockfish QS assigned to an LLP license in the catcher/processor sector be the sum of the Rockfish QS units, by species,

calculated for catcher/processor LLPs under § 679.80(f)(3)(iii)(E)?

Response: No, the calculation in § 679.80(f)(3)(iii)(F) multiplies the percentage of the total legal landings for a specific LLP license in a specific primary rockfish species determined in § 679.80(f)(3)(iii)(E) by the initial Rockfish QS pool established in Table 29 to part 679. This calculation is necessary to derive the number of Rockfish QS units that will be assigned to an LLP license. No change to this provision has been made.

Comment 35: Paragraph (f)(3)(iii)(F) of § 679.80 refers to the ''five qualifying years'' used to compute percentage of rockfish landings attributable to the catcher/processor sector. The Council motion states that a sector's allocation is based on the individual vessel histories with the ''drop two years'' provision applied at the vessel level. As a result, the sector allocation will consider more than five years, since different LLP holders will drop different years. For clarity, remove the word five, referencing instead qualified catch or landings. Paragraph (f)(3)(iii)(G) of § 679.80 makes the same reference to five qualifying years for the catcher vessel sector allocation. Drop the word ''five''.

Response: NMFS agrees and has removed the reference to ''five'' in these provisions. Although only five years are used in the calculation for the sum of harvests attributed to a specific LLP license in the catcher/processor sector, more than five years may be considered before that calculation is made.

Comment 36: Paragraph (a)(3) of § 679.81 suggests that a sector's allocation is its Rockfish QS divided by the Rockfish QS of the sector—it should be all Rockfish QS in the pool (of both sectors). The formula accompanying the text appears to be correct. Revise text to say all Rockfish QS in the pool. Also, the result is not the ''amount'' of TAC, as written, but the ''percent'' of TAC.

Response: NMFS agrees and had modified the text in this section to match the text provided in the algorithm that is part of this provision. The text clearly indicates that the denominator for this computation is the total Rockfish QS pool for a primary rockfish species. In addition, NMFS changed the word amount to percent in § 679.81(a)(3) to correctly note that the results of the calculations in this section are each a ''percent'' of the total TAC for a primary rockfish species, and not a specific amount.

Comment 37: In § 679.81(a)(4)(ii), two issues arise from not making allocations of halibut PSC to the limited access fisheries. First, allowing the limited access fishery to use halibut PSC from the overall trawl halibut PSC limit could allow the limited access fishery to use far more halibut PSC than would be allocated as halibut PSC CQ had limited access vessels joined cooperatives. Second, a specific halibut PSC limit is not assigned to the limited access fishery. Either, allocate a specific halibut PSC limit to the limited access fishery to limit the amount of halibut PSC that may be used by those vessels, or if a specific halibut PSC limit is not allocated to the limited access fishery, then halibut PSC should be deducted from the overall trawl halibut PSC limit.

Response: NMFS agrees in part. NMFS intends to deduct any halibut PSC assigned to the rockfish cooperatives as CQ and any halibut PSC used in the limited access fisheries from the third season halibut PSC allocation to the deep water complex. Prior to the Program, halibut PSC used in the rockfish fisheries and deep-water flatfish fisheries was deducted from the deep-water halibut PSC complex. NMFS will maintain a similar mechanism for the management of halibut PSC used for the limited access fishery. After reducing the third season halibut PSC allocation to the deep water complex to accommodate the CQ allocations, any remaining halibut PSC used in the limited access fishery would be deducted from the remaining third season allocation. This Program does not provide a specific allocation to the limited access fishery; any halibut PSC used by vessels not fishing under a CQ permit and in the deep-water fishery complex fisheries, or the limited access fishery would be deducted from this general halibut PSC account.

Comment 38: Paragraph (a)(5)(ii)(A) of § 679.81 contains a typographical error. The word ''cooperatives'' should be singular, not plural.

Response: NMFS agrees and has modified § 679.81(a)(5)(ii)(A) to correct the typographical error.

Comment 39: In § 679.81(b)(2), the allocation of secondary species to the catcher/processor sector should be based on the catch of secondary species by eligible catcher/processors while those vessels were targeting rockfish (where targeting is defined as a landing in which primary rockfish species are the dominant species). The provision, as currently written, seems to include all catch of secondary species by catcher/processors during the directed fishery, regardless of whether a catcher/processor is targeting rockfish. In § 679.81(b)(3), the allocation of secondary species to the catcher vessel sector should be based on the catch of secondary species by eligible catcher vessels while those vessels were targeting rockfish. Include a targeting requirement.

Response: NMFS agrees. To reduce inconsistency with the Council intent, specifically Section 3.3.1.4 of the Council motion recommending this action, NMFS has modified § 679.81(b)(2) to note that secondary species shall be allocated to the catcher/processor sector based on catch of secondary species that was retained during the directed rockfish species fisheries. Additionally, NMFS has modified § 679.81(b)(3) to note that secondary species shall be allocated to the catcher vessel sector based on catch that was retained during the directed primary rockfish species fisheries.

Comment 40: According to the draft EA/RIR/IRFA, the sablefish allocation for catcher processors will be based on the cooperative's aggregate primary species Rockfish QS holdings within the sector, and the rougheye allocation will be 58.87 percent and the shortraker allocation will be 30.03 percent of the TAC. Table 3 in the preamble to the proposed rule title ''Secondary species allocated to rockfish cooperatives in the Central GOA by fishery sector'' has the wrong allocation scheme within the table and appears to have mismatched the secondary species categories with their corresponding row text for the catcher processor sector.

Response: NMFS agrees that the preamble text in the table is inconsistent with the regulatory text in § 679.81(b)(2)(v) and (vi). The regulatory text is correct and the error in the preamble was a formatting error.

Comment 41: Paragraphs (b)(2) and (3) of § 679.81 contain typographical errors. The phrase ''during the directed fishery for any primary rockfish fishery,'' should read ''during the directed fishery for any primary rockfish species.''

Response: NMFS agrees and has modified § 679.81(b)(2) and (3) to correct these typographical errors. NMFS has also made corrections in other sections of the rule to replace the term ''primary rockfish fishery,'' with the appropriate term ''primary rockfish species.'' These changes were made in § 679.2 under the definition of a ''legal rockfish landing,'' and in § 679.81(a)(3), and in the title to Table 28 to part 679.

Comment 42: Revise paragraphs (b)(5)(i) and (c)(4)(i) of § 679.81 to omit Rockfish QS assigned to the opt–out fishery from the denominator. In § 679.81(b)(5)(i) and § 679.81(c)(4)(i), the allocation of secondary species and halibut PSC, respectively, to catcher/processor cooperatives is based on target rockfish histories of cooperative members. The allocations use all

catcher/processor Rockfish QS in the denominator. This denominator includes Rockfish QS attributed to vessels that opt–out of the Program. The denominator should exclude ''opt–out QS,'' as was done for primary species allocations in § 679.81(a)(5)(ii)(A).

Response: NMFS agrees and has revised § 679.81(b)(5)(i) and § 679.81(c)(4)(i) to make these changes. The same allocation protocol for CQ that applies to primary rockfish species for the catcher/processor sector should apply for secondary species and halibut PSC. This would effectively reallocate secondary species and halibut PSC to cooperative participants as envisaged in Section 9.1 of the Council motion supporting this action that notes that ''the history of [catcher/processor] vessels which opt–out will remain with the sector.'' The algorithm for primary species allocations in § 679.81(a)(5)(ii)(A) does not consider the allocations that would be attributed to participants in the opt–out fishery as part of the denominator for allocating the primary rockfish species. This approach is also consistent with the approach described in the final EA/RIR prepared for this action.

Comment 43: The provision in § 679.81(c) references a use limitation for halibut PSC in § 679.82. No use limits in that section apply to halibut PSC. Remove this incorrect reference.

Response: NMFS agrees and has removed the reference to use caps in § 679.81(c)(1). Use caps are intended to apply only to the use of primary rockfish species and not to the use of halibut PSC that is assigned to a cooperative. The FMP and Section 6.2 of the Council motion recommending this action indicate that use caps should not apply to halibut PSC used by cooperatives.

Comment 44: In § 679.81(c)(1), both secondary species and halibut PSC are allocated based on the LLP holder's rockfish history. Therefore, use caps only apply to the Rockfish QS. This suggests secondary species and halibut PSC are non-severable from the Rockfish QS, and are allocated on an annual basis. Secondary and halibut PSC CQ need to be fully transferable between cooperatives and also be separable from the originating Rockfish QS for these transfers to be effective. These species will most likely be the most restrictive for participants, and therefore they need to be used by industry efficiently.

Response: This comment has been addressed in response to Comment 43. In addition, NMFS notes that the regulations concerning the transfer of CQ do not restrict the ability of a rockfish cooperative to transfer its halibut PSC CQ or secondary species CQ separate from the primary rockfish species CQ. NMFS has clarified the regulations at § 679.81(i)(4)(iii) to note that secondary species and halibut PSC CQ are not assigned to specific members of a rockfish cooperative. Additionally, NMFS has clarified regulations at § 679.82(a)(1) to note that use caps do not apply to secondary species and halibut PSC CQ.

Comment 45: In paragraphs (c)(1) and (2) of § 679.81, the allocation of halibut PSC should be based on the use of halibut PSC by eligible catcher processors while targeting rockfish.

Response: NMFS agrees. However, these comments address the proposed rule at paragraphs (c)(2)(i) and (c)(3)(i) of § 679.81 rather than paragraphs (c)(1) and (c)(2) of that section as noted by the commenter. The response to this comment is similar to that provided to Comment 39, but is specific to the amount of halibut PSC attributed to the catcher/processor and catcher vessel sectors. To reduce inconsistency with the Council intent, NMFS modified § 679.81(c)(2)(i) to note that halibut PSC shall be allocated between the catcher/processor and catcher vessel sectors based on the amount of halibut PSC that was ''used during the directed fishery for any targeted primary rockfish species.''

Comment 46: In paragraphs (c)(2) and (3) of § 679.81, the division of halibut between the sectors should be based on the relative aggregate qualified rockfish catch of the sectors. The proposed rule incorrectly bases the allocation on halibut use. Revise to base the division on sector rockfish history.

Response: NMFS agrees. The allocation of halibut PSC between the catcher/processor and catcher vessel sectors is based on first determining the total amount of halibut PSC attributed to LLP licenses eligible for the Program. Second, the amount of halibut PSC used by these LLP licenses is divided between the catcher/processor and catcher vessel sectors based on the relative amount of primary species Rockfish QS assigned to these sectors.

To improve consistency with Council intent in Section 4.5 of the Council motion which notes that ''each LLP holder will receive an allocation of halibut mortality equivalent to their proportion of the sector rockfish history,'' and Amendment 68, NMFS modified § 679.81(c)(2) so that the maximum amount of halibut PSC that may be used by participants in the Program is based on the amount of halibut PSC used by all eligible LLP licenses as a percentage of the total halibut mortality used by all fishery participants during the seven year period from 1996 until 2002. This percentage of halibut mortality is then multiplied by the total GOA halibut mortality limit. This amount of halibut mortality is further divided between the catcher/processor and catcher vessel sectors based on the percentage of aggregate Rockfish QS assigned to each sector, with modifications made to accommodate LLP licenses assigned to the opt–out fishery in the catcher/processor sector. By making these changes, the regulations applicable to the catcher/processor and catcher vessel sectors have also been consolidated. The regulations at § 679.81(c)(2) include the allocation mechanism applicable to the catcher/processor and catcher vessel sectors and § 679.81(c)(3) has been deleted because those provisions are redundant with the revised § 679.81(c)(2). Accordingly, § 679.81(c)(4) and (5) of the final rule have been renumbered as § 679.81(c)(3) and (4).

Comment 47: The Council motion notes that a vessel's operational status determines how Rockfish QS should be assigned between the catcher vessel and catcher/processor sectors. If a vessel with a catcher/processor LLP licence was not used to process the rockfish catch onboard the vessel, than the Rockfish QS derived from the landings on that vessel is assigned to the catcher vessel sector. The provisions in § 679.81(d)(2)(ii) and (d)(4)(ii) seem to dictate that Rockfish QS on a catcher/processor LLP license can only be allocated to the catcher/processor sector. Additionally, this suggests that a catcher/processor LLP license is only allowed to form cooperatives with other holders of catcher/processor LLP licenses and not with catcher vessel LLP license holders. The regulations need to allow catcher/processor LLP license holders that did not process on board to have that catch history assigned to the catcher vessel sector and be able to join catcher vessel cooperatives.

Response: NMFS agrees. The commenter correctly notes that if a vessel has an LLP license with a catcher/processor endorsement but that vessel did not harvest and process primary rockfish species aboard that vessel, the Rockfish QS derived from the legal rockfish landings attributed to that LLP license would be assigned to the catcher vessel sector. This is indicated in § 679.80(b)(5)(i). However, the proposed regulatory text at § 679.81(d)(2)(ii) and (d)(4)(ii) stated that an eligible rockfish harvester may assign Rockfish QS to a rockfish cooperative in the catcher vessel sector if that Rockfish QS is associated with an

LLP license with a catcher vessel designation that is endorsed for trawl gear in the Central GOA trawl fishery. This proposed provision was inconsistent with the provisions of § 679.80(b)(5)(i), and would seemingly limit the ability of an eligible rockfish harvester, with a catcher/processor endorsed LLP license with Rockfish QS assigned to the catcher vessel sector, from using that Rockfish QS in a catcher vessel cooperative.

To correct this inconsistency, and allow the use of Rockfish QS assigned to the catcher vessel sector regardless of the type of LLP license on which that Rockfish QS is assigned, NMFS has made the following modifications. In § 679.81(b)(5), NMFS has modified § 679.81(b)(5)(ii) and added a new § 679.81(b)(5)(iii) to state that a legal rockfish landings is attributed to the catcher vessel sector if it is a legal rockfish landing but does not meet the criteria of being a legal rockfish landing for the catcher/processor sector.

NMFS has also modified § 679.81(d)(2)(ii) and (d)(2)(iii), which address the use of Rockfish QS in a rockfish cooperative, and § 679.81(d)(4)(ii) and (d)(4)(iii), which address the use of Rockfish QS in the limited access fishery. These modifications allow an eligible rockfish harvester to assign Rockfish QS to a rockfish cooperative or limited access fishery based on the sector to which those Rockfish QS are assigned, not based on the designation of the LLP license that gave rise to that Rockfish QS.

Comment 48: Modify the language in the preamble on page 33045 to make it clear that Rockfish QS resulting from those legal landings made aboard a vessel with an LLP licence endorsed for catcher/processor activity but not processed onboard that vessel is assigned to the catcher vessel sector. Further clarify that there is at least one vessel which operated under the authority of a catcher/processor LLP license with legal rockfish landings that did not process catch that rockfish catch onboard.

Response: NMFS notes the error in the preamble (71 FR 33045) to the proposed rule and has addressed the regulatory effects of this error in the response to Comment 47.

Comment 49: In § 679.81(d)(5), specify that only catcher/processors can assign their Rockfish QS to the opt–out fishery.

Response: NMFS agrees and has modified § 679.81(d)(5) to clearly state that only an eligible rockfish harvester with Rockfish QS assigned to the catcher/processor sector may choose to apply for the opt–out fishery.

Comment 50: Revise § 679.81(e)(4)(i)(B) and § 679.81(e)(8) to allow trip declarations for moving from rockfish targets to other targets. In § 679.81(e)(4)(i)(B), at least one vessel must be designated to harvest the CQ assigned to a cooperative in the annual application for CQ. This provision forces a rockfish cooperative to devote one vessel exclusively to harvest under a CQ permit for that rockfish cooperative at all times, contravening the trip-by-trip method for accounting and monitoring rockfish activity as was discussed in Section 3.4.1 of the draft EA/RIR/IRFA that was under review by the Council at the time of final action. Rockfish cooperatives will require flexibility in determining how the CQ permit should be used.

Additionally, in § 679.81(e)(8), the requirement to amend an application for CQ to remove a vessel from the rockfish target fishery is inconsistent with the rockfish trip declaration contemplated by the analysis. Paragraph (i)(3)(xxii) in § 679.81 is also inconsistent with the draft EA/RIR/IRFA. It effectively creates ''rockfish boats'' that cannot fish in any fishery other than the Rockfish Program fishery after May 1 until the fishery is closed for the cooperative or the cooperative refiles its application for CQ. These provisions are completely unreasonable and remove most benefits from the Program. The analysis contemplates a trip declaration for entering the rockfish fishery to allow for adequate monitoring and accounting. This aspect of the Program is critical to achieving its intended benefits.

Response: Neither Amendment 68 nor the Council motion recommending Amendment 68 address specific fishing plans by vessels that are assigned to a cooperative or the methods that NMFS should use to determine how a vessel's catch would be deducted from a CQ permit. Section 3.4.1 of the final EA/RIR prepared for the approval of Amendment 68 did review potential mechanisms of accounting for catch by vessels that are assigned to a rockfish cooperative. One of the mechanisms specifically mentioned was for NMFS to monitor vessels that were participating in the Program on a trip by trip basis in the catcher vessel sector, or on a haul-by-haul basis in the catcher/processor sector, with the assumption that this form of monitoring could be effectively provided within NMFS' management and funding constraints.

The final EA/RIR noted that ''given the complexity of the [Program] and the limited time period for its effectiveness, NOAA Fisheries intends to manage the fishery to minimize costs and the complexity of quota management.'' NMFS has attempted to develop a monitoring and enforcement program that is cost-effective, manageable, and effective. The final EA/RIR also notes that:

Share-based management programs can increase the incentive of participants to misreport and high grade catch, while at the same time increasing the burden on managers to provide highly defensible estimates of catch, especially when those estimates directly impact quota holders. NOAA Fisheries has dealt with these issues by clearly articulating goals for the management of share-based fisheries and imposing new and more stringent monitoring and observer requirements as these programs have been developed. All of these programs have been unique in terms of the fleet and fisheries rationalized, and interventions developed for the programs have varied as well. The Central Gulf of Alaska rockfish pilot program is no different in this regard and development of a suitable monitoring program will involve the development of new tools to ensure defensible catch data is collected to minimize unreported discard of allocated species catch.

The monitoring and enforcement provisions in the proposed rule were designed to meet the multiple objectives of NMFS' catch accounting and reporting needs. Paragraph (e)(4)(i)(B) of § 679.81 of the proposed rule did create a condition in which rockfish cooperatives would need to designate at least one vessel to fish the CQ permit for that cooperative effective on May 1. Paragraph (e)(8) of § 679.81 did provide a mechanism for cooperatives to modify their CQ permit to redesignate a specific vessel or vessel(s) to fish under a CQ permit. This mechanism differs somewhat from a specific trip-by-trip declaration of CQ permit and non-CQ permit fishing. However, providing trip-by-trip accounting dramatically increases the administrative burden to track each individual vessel, particularly if vessels frequently transit between CQ and non-CQ fishing. Check-in/check-out provisions quickly absorb staff resources to collect, monitor, and verify check-in/check-out reports with fish ticket data when discrepancies arise.

Vessels that check in and out of CQ permit fishing frequently could create potential confusion for observers that may be switching monitoring standards and protocols for each trip. A check-in/check-out procedure is required in the halibut and sablefish individual fishing quota (IFQ) program. However, under the halibut and sablefish IFQ program, the costs of monitoring and administering a check-in/check-out procedure are recoverable under Section 303(d)(2)(B) of the Magnuson-Stevens

Act. Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to ''collect a fee to recover the actual costs directly related to the management and enforcement of any...individual fishing quota program [or] community development quota program.'' Any IFQ program, must follow the statutory provisions set forth by section 304(d)(2) of the Magnuson-Stevens Act and other provisions of the Magnuson-Stevens Act related to cost recovery and fee collection for IFQ programs. NMFS and NOAA General Counsel are reviewing the applicability of the Magnuson-Stevens Act provisions on cost recovery and fee collection to the Program. Should subsequent analysis indicate that Section 303(d)(2)(B) of the Magnuson-Stevens Act applies to the Program, and a cost recovery program is implemented, more elaborate check-in/check-out procedures could become more affordable for NMFS and would warrant additional review.

The commenter appears to be most concerned about providing flexibility for cooperatives to designate specific vessels to fish under the CQ permits in a timely fashion, and redesignate vessels as necessary. NMFS has adopted several modifications to provide additional flexibility to cooperative members, while meeting existing catch accounting limitations and funding constraints.

First, NMFS has deleted provisions at § 679.81(e)(4)(i)(B) that required that if no vessels are designated to use the CQ issued to the rockfish cooperative on the application, then all vessels using LLP licenses assigned to the rockfish cooperative will be assumed to be designated to use the CQ.

Second, NMFS has deleted regulations in § 679.81(e)(8) that provide the mechanism for amending the CQ permit to add or delete vessels that are permitted to fish under a CQ permit for a cooperative. NMFS has also deleted references to the CQ permit amendment in paragraphs § 679.5(r)(1)(ii), and § 679.81(i)(3)(x).

Third, NMFS has provided a check-in procedure by inserting a new § 679.5(r)(10) that allows the designated representative of a cooperative to designate when a vessel will fish under a CQ permit for that rockfish cooperative. A vessel check-in must be submitted 48 hours prior to the beginning of a fishing trip by that vessel. This advance notice will provide NMFS time to adjust catch accounting procedures and accurately monitor catch. The designated representative can not submit more check-in reports in a calendar year than an amount equal to three times the number of LLP licenses that are assigned to that rockfish cooperative in that calendar year. This limit would reduce the number of check-in reports and vessels that must be tracked and reduce the chance that a specific vessel's catch is misapplied in NMFS' catch accounting system.

Fourth, NMFS, would include in § 679.5(r)(10) provisions that allow the designated representative of a cooperative to designate when a vessel will no longer fish under a CQ permit for that rockfish cooperative. The designated representative could submit no more check-out reports in a calendar year than an amount equal to three times the number of LLP licenses that are assigned to that rockfish cooperative in that calendar year. A vessel check-out is effective the earlier of:

- The end of a complete offload if that vessel is fishing under a CQ permit for a catcher vessel cooperative; or
- The end of the week-ending date as reported in the weekly production report if that vessel is fishing under a CQ permit for a catcher/processor cooperative; or
- The end of a complete offload if that vessel is fishing under a CQ permit for a catcher/processor cooperative.

A vessel check-out must be submitted within 6 hours after its effective date and time. This will ensure that catch is properly debited against a CQ account and reduces the risk that a subsequent trip would be misapplied to a CQ permit and have to be corrected.

Fifth, § 679.7(n)(7)(iii) is modified so that the designated representative of a rockfish cooperative would be responsible for submitting timely check-in/check-out reports for fishing under a CQ permit according to the provisions in § 679.4(n)(10).

Sixth, § 679.7(n)(7)(iv) is modified to apply only to catcher vessels, and § 679.7(n)(7)(vi) is removed. This effectively authorizes a catcher/processor vessel to have species harvested under a CQ permit and those not harvested under a CQ permit onboard the vessel at the same time. Therefore, if a catcher/processor vessel checked-out while at sea at the end of a week-ending date, it would not need to offload prior to fishing in other non-Program fisheries.

These modifications do not allow trip-by-trip or haul-by-haul designation of CQ and non-CQ harvests. That detailed level of catch accounting would require significant changes to the existing catch accounting system software, require additional resources to track a potentially large number of changes in accounting methods, and add a greater degree of complexity to an already complex Program that has a two-year duration. These modifications accommodate the requirements and limitations of NMFS and the desire for maximum flexibility proposed by the commenter. These modifications adopted by NMFS do allow vessels to be checked in to fish under a CQ permit when needed and without a potentially lengthy approval process. Designated representatives for cooperatives will need to coordinate fishing plans with their members to ensure that once a vessel is checked in, it is used to effectively harvest fish under the CQ permit and recognize that once a vessel is checked out it can no longer be used to fish for that cooperative's CQ unless checked in again. This will limit vessels to fishing under a CQ permit for a specific time period, but cooperative managers should be able to coordinate fishing schedules with their members to avoid subjecting them to monitoring and enforcement requirements beyond those required to effectively manage this complex multispecies quota Program. Alternatively, if a cooperative is unable to effectively arrange fishing schedules with their members, it may transfer its CQ to another cooperative, thereby relieving its members of the requirements for fishing under a CQ permit.

Comment 51: How long will it take NMFS to process the application to amend vessels authorized to fish CQ under § 679.81(e)(8)(i)?

Response With the changes made in the response to Comment 50, this application no longer is required and the comment is no longer applicable.

Comment 52: Although not explicit in the proposed rule, the preamble states that a vessel could not be redesignated to fish rockfish CQ, if any fish were onboard. This could be overly burdensome on catcher processors that would be forced to offload all products despite having adequately accommodated accounting and monitoring of catch under the Program and under sideboards.

Response: Catcher/processors are not required to offload all products harvested prior to being designated to fish under a CQ permit. Likewise, a catcher/processor vessel would not be required to offload all products harvested under a CQ permit prior to fishing in a non-Program fishery. Changes to the provisions for designating vessels to harvest CQ are addressed in the response to Comment 50.

Comment 53: Allow the rockfish cooperative vessels to declare, on a tow by tow basis as with CDQ fishing, whether they are fishing under a CQ permit or not. In May or June the vessel will declare a rockfish tow or an open

access tow. Nothing accrues to the rockfish allocation in May and June unless it's specifically rockfish harvested under a CQ permit. In July, the vessel will declare a rockfish tow or a sideboard tow (nothing accrues to open access in the month of July).

Response: Aspects of this comment addressing tow-by-tow declarations of harvest to the Program have been addressed in the response to Comment 50. In addition, during the month of July, it is assumed that if a vessel is subject to a sideboard limit, than all catch made by that vessel in July, unless fishing under a CQ permit, is applied to the sideboard limit for that vessel. More generally, it should be noted that rockfish fisheries in the Central GOA differ substantially from CDQ rockfish fisheries in the BSAI and similar catch accounting and monitoring principles are not applicable to the Program. NMFS notes that the allocations of rockfish species to the CDQ Program are much smaller than the allocations of primary rockfish species under the Program, and those small allocations are rarely fully prosecuted. As an example, in 2005, the Pacific ocean perch allocation to the CDQ Program was approximately 950 mt for the BSAI. However, only approximately 100 mt of Pacific ocean perch, equivalent to roughly one day of harvest by a catcher/processor vessel, was taken in a directed CDQ rockfish fishery. NMFS expects that rockfish allocations under the Program will be fully prosecuted consistent with historic harvest patterns. This difference means that NMFS is likely to be tracking a much greater number of hauls in the Program than NMFS monitors currently in the CDQ multispecies fisheries.

Additionally, designating specific hauls as CDQ or non-CDQ hauls is largely limited to the pollock fisheries. Effectively, this means that vessels do not target CDQ multispecies fisheries at the same time that they are targeting non-CDQ multispecies fisheries. NMFS has limited experience with monitoring CDQ and non-CDQ multispecies harvests on a haul-by-haul basis. The primary advantage of haul-by-haul accounting in the CDQ pollock fishery is that it allows vessels to assign specific pollock hauls to either an AFA cooperative, or to the CDQ group's allocation. This benefits the CDQ groups and the AFA cooperatives, by allowing vessel operators to attribute hauls, the associated incidental catch, and halibut PSC to either the AFA cooperative or the CDQ group, maximizing the use of either the CDQ group or the AFA cooperative's allocation. Information reviewed by NMFS indicates that halibut PSC use in CDQ pollock fisheries differs from that in AFA directed pollock fisheries even through these fisheries are prosecuted by the same vessels simultaneously. This is likely due to the selective attribution of catches with higher halibut PSC rates to the AFA Program, which minimizes the use of halibut PSC quota allocated to CDQ groups.

Under the Program, attributing specific hauls to the Program or non-Program fisheries could create an incentive for vessel operators to attribute hauls with high incidental catch or halibut PSC to the non-rockfish fisheries. This could cause halibut PSC use rates in the non-Program fisheries to increase, and could constrain non-rockfish fisheries in the Central GOA limited by halibut PSC use, such as deep-water flatfish fisheries. As an example, a vessel operator could assess the species composition of hauls by making several hauls and designating hauls with lower quality rockfish or higher halibut PSC as non-Program hauls. This process of selectively attributing tows to a CQ permit or the rockfish limited access fishery could increase discarding of rockfish that are harvested in non-Program hauls to ensure that the rockfish harvested is below the MRA for the other species (e.g., flatfish) that are also harvested in these tows. Unlike pollock, rockfish species have life histories that may make them less resilient to fishing pressures. Given the TAC, allowable biological catch, and overfishing level of the primary rockfish fisheries, NMFS is cautious about potentially introducing additional incentives for high grading of catch which can occur in quota-based fisheries.

Finally, NMFS notes that the Program is intended, in part, as a two-year pilot project to provide additional information about quota management of a multispecies fishery. As with other aspects of this Program, changes in catch accounting can be initiated after NMFS and the industry have additional experience with the Program.

Comment 54: Paragraphs (e)(5)(i)(E) and (e)(6)(i)(F) of § 679.81 require detailed ownership information from persons assigning their LLP license to the limited access or opt–out fisheries. These fisheries do not receive an individual allocation of primary rockfish species, so neither sector is subject to an ownership cap. The information is unnecessary and should not be required.

Response: NMFS disagrees. The use caps that are established in § 679.82 are applicable to the amount of Rockfish QS that a person may hold, and the amount of CQ that may be used by a rockfish cooperative that is derived from an eligible rockfish harvester's holdings of Rockfish QS. Although an eligible rockfish harvester who assigns his LLP license and associated Rockfish QS to the limited access fishery or the opt–out fishery may not receive CQ in a given year, that person is still a holder of Rockfish QS. As such, NMFS must have a means for determining whether that eligible rockfish harvester exceeds the Rockfish QS use cap. Ownership data is collected on an annual basis and because the application for the rockfish limited access fishery and application to opt–out are due annually, these forms provide a means for NMFS to gather timely ownership information. The rule has not been modified.

Comment 55: The estimated time line between the final regulation going into effect (November 1, 2006) and when a company must submit an application to participate in the Program (December 1, 2006) is unrealistic and simply not practical. The 30-day time period is inadequate to assemble and make a complete application as set forth in § 679.81(e). This application, which will likely bring together multiple companies to form a cooperative, is not a simple task. To form an entirely new ''cooperative legal entity'' that meets the multitude of administrative requirements in only 30 days is not practical.

Response: NMFS agrees and has modified the due date to apply to participate in the Program in § 679.80(e)(3) from December 1, 2006, to January 2, 2007. NMFS also modified the due date for the application for CQ, application for the rockfish limited access fishery, application to opt–out, and Application for the entry level fishery in § 679.81(e)(3), from December 1 of the year prior to the year in which a person wishes to participate, to March 1 of the year in which that person wishes to participate. These changes will allow potentially eligible harvesters and processors to apply to participate in the Program and then have nearly 60 days to decide whether to participate in a cooperative, limited access fishery, or opt–out. During this time period, harvesters could coordinate with each other. This will also provide additional time for eligible rockfish harvesters in the catcher vessel sector who wish to form a rockfish cooperative to coordinate with the eligible rockfish processor with whom they may associate.

Comment 56: In § 679.81(f), remove the statement concerning processor eligibility transfers because the Council motion makes no provision for the

transfer of processor licenses. Additionally, the provisions in paragraphs (f)(2) and (g)(1) of § 679.81 are inconsistent with the Council motion. Since the Program is short term, transfer of eligibility once the Program is implemented is not necessary. The Council motion makes no provision for the transfer of processor eligibility.

Response: NMFS agrees. Although processor eligibility transfers are likely to be necessary should Congress provide additional authority to NMFS to extend this Program, the Council did not specifically recommend provisions to allow processors to transfer their eligibility to another processor. NMFS has deleted the provision concerning the transfer of processor eligibility in § 679.81(f) and (f)(2). In addition, NMFS has modified § 679.81(g)(1) to note that a person may not transfer their eligibility as a rockfish processor to another person except in the case when a person purchases a processing facility and the processing history associated with that facility. In this case, that person would be eligible to operate that facility and use the processing history associated with that facility.

Comment 57: Paragraph (f)(1)(ii)(B) of § 679.81 requires the names of all persons with ownership interest in an LLP license upon the transfer of CQ. If NMFS already has this information from the annual application for CQ, it is not needed again when CQ is transferred.

Response: NMFS agrees and has deleted this requirement in § 679.81(f)(1)(ii)(B). The requirement to collect ownership information of rockfish cooperative members is addressed under the annual application for CQ requirements in § 679.81(e)(4)(i)(B)(*2*) and is not required again.

Comment 58: In § 679.81(f)(1), the permission of the affiliated processor is required for any CQ transfer by a catcher vessel cooperative.

Response: NMFS agrees. The regulations at § 679.81(f)(1)(v) and (vi) provide that any transfer must be signed by an designated representative of the cooperative. NMFS had presumed that this designated representative would have the authority of the eligible rockfish processor with whom that rockfish cooperative is associated. NMFS has modified § 679.81(f)(1)(v) and (vi) to require that the designated representative provide explicit authorization signed by the applicant and the eligible rockfish processor with whom that rockfish cooperative is associated with any application. This modification is consistent with Section 5.4 of the Council motion recommending this action which states that rockfish cooperatives ''may engage in inter-cooperative transfers of annual allocations to other cooperatives with agreement of the associated qualified processor.'' An application will not be considered valid without this explicit authorization.

Comment 59: The provisions in § 679.81(h) suggest that MRAs apply when rockfish boats are participating in non-rockfish fisheries. Since ''opting out'' has been defined as a fishery with applicable MRAs defined, it suggests that all fishing by a rockfish boat is subject to rockfish MRAs. Applying the Program MRAs to cooperatives fails to distinguish between vessels assigned to a rockfish cooperative and fishing under a CQ permit, and vessels assigned to a rockfish cooperative but not fishing under a CQ permit. A sentence could be added stating the fishing outside cooperatives and outside of the limited access rockfish fishery is subject to Table 10 MRAs.

Response: NMFS agrees in part. The MRAs specific to the Program are applicable only when vessels are fishing in the Central GOA for primary rockfish species under a CQ permit, or in a limited access fishery. Fishing by vessels that are not fishing under a CQ permit or in the limited access fishery would continue to be subject to the MRAs applicable for non-Program fisheries. NMFS does agree that additional clarity is required in § 679.81(h)(1) to note that a vessel assigned to a rockfish cooperative and fishing under a CQ permit may harvest groundfish species not allocated as CQ up to the MRA for that species as established in Table 30 to this part. Any vessel assigned to a cooperative not fishing under a CQ permit (i.e., engaged in non-Program fisheries) will continue to be subject to MRA limits established under Table 10 to part 679.

Comment 60: In § 679.81(i)(1), persons who leave a rockfish cooperative are bound by the allocation of CQ during the year. This should also state that any sideboards applicable to a catcher/processor rockfish cooperative continue to bind the person. Include a provision stating that sideboards continue to bind a person that leaves a cooperative.

Response: NMFS agrees. Although § 679.82(f)(2) details those vessels and LLP licenses that are subject to sideboard limits for a catcher/processor sector, that section does not specifically state that once a vessel or LLP license is assigned to a rockfish cooperative it continues to be bound by the sideboard limits established for that rockfish cooperative. NMFS has modified § 679.82(f)(2), (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) so it clearly states that once an LLP license of vessel has been assigned to a rockfish cooperative that LLP license and vessel continues to be subject to the sideboard limits established for that rockfish cooperative under § 679.82(d) and (f), for that calendar year.

Comment 61: Paragraph (i)(3)(vi) of § 679.81 should note that 75 percent of the Rockfish QS eligible for the cooperative is necessary for cooperative formation.

Response: NMFS agrees. Section 5.4 of the Council motion recommending this action notes that ''75 percent of historical shares'' (i.e., Rockfish QS) delivered to an eligible rockfish processor, must be assigned to a rockfish cooperative in order for a rockfish cooperative to form. NMFS has modified § 679.81(i)(3)(vi) to note that a rockfish cooperative can form only if it is assigned Rockfish QS that represents at least 75 percent of all the legal rockfish landings delivered to that eligible rockfish processor during the four years selected by that processor. Legal rockfish landings that do not yield Rockfish QS would not be considered in the calculation.

Comment 62: In § 679.81(i)(3)(xii) the phrasing of the question and answer should be edited because the intent of this provision is not clear.

Response: NMFS agrees. Although the intent of this provision has not been modified, NMFS rephrased § 679.81(i)(3)(xii) to note that sideboard limits assigned to a rockfish cooperative in the catcher/processor sector are limits applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.

Comment 63: Paragraph (i)(3)(xv) in § 679.81 is unclear and may deviate from the Council's intent. Specifically, if a company owns two qualified processing facilities, it could have two associated cooperatives (one for each plant). The intent of the processing history transfer provisions are two-fold. First, a processor can buy a facility and its associated processing history and operate that facility. This allows a processor to operate two plants with two distinct rockfish cooperatives. Second, the processor could buy the processing history of a closed facility. This processing history could be combined with the processing history at another facility, and that combined processing history would be used to form associations with a single plant (which must be in the same community as the plant from which history was purchased). In any case, the processor must stay under the use caps.

Response: NMFS agrees and has modified § 679.81(i)(3)(xv) to more clearly note that an eligible rockfish processor will be issued a single eligible rockfish processor permit for the aggregate processing history based on (1) the holdings of processing history at a specific facility, and (2) acquired processing history from a shoreside processor or stationary floating processor that is closed. A person may only receive eligibility for processing history that is acquired without the purchase of the processing facility associated with that history if that person held that processing history prior to the end of the application period to be included in the Program. The eligible rockfish processor will select a single four year period applicable to the aggregate processing history held by that eligible rockfish processor for determining which eligible rockfish harvesters may form a rockfish cooperative in association with that eligible rockfish processor. Eligible rockfish harvesters are eligible for a rockfish cooperative in association with that processor, based on the aggregated processing history held by that processor. Once a rockfish cooperative associates with that eligible rockfish processor, that processor may receive rockfish delivered by that rockfish cooperative at a shoreside processor or stationary floating processor owned by that eligible rockfish processor, subject to any other restrictions that may apply.

NMFS has also modified § 679.81(i)(3)(v) to note that an eligible rockfish processor may select only one processor qualifying period (i.e., the four of five year period) that is applicable to the aggregated processing history held by that eligible rockfish processor.

If an eligible rockfish processor owns more than one processing facility, and therefore more than one processing history, that eligible rockfish processor would associate with one cooperative at one facility, and associate with another cooperative at another facility. As the commenter notes, any processing activity will continue to be subject to processing use caps.

Comment 64: Paragraph (i)(4)(i) of § 679.81 should be revised to state that 75 percent of the eligible Rockfish QS that was initially delivered to that processor is necessary for rockfish cooperative formation.

Response: NMFS agrees and has modified § 679.81(i)(4)(i) to clarify that if an eligible rockfish harvester has not delivered to an eligible rockfish processor, any Rockfish QS issued to that eligible rockfish harvester may not be considered as contributing to the amount of Rockfish QS necessary to meet a minimum of 75 percent of the legal rockfish landings required to form a rockfish cooperative. This change is consistent with the response to Comment 62.

Comment 65: In § 679.81(i)(4)(ii) delete ''for'' from the second line which reads ''a person fishing for CQ,'' so it reads ''a person fishing CQ.''

Response: NMFS agrees and has corrected the typographic error in § 679.81(i)(4)(ii).

Comment 66: Paragraph (i)(4)(iii) of § 679.81 should be revised to note that catcher vessel sector inter-cooperative transfers are required to be approved by the associated processor as is noted in section 5.4 in the Council motion recommending this action.

Response: NMFS agrees. As noted in the response to Comment 58, NMFS will require that any inter-cooperative transfer include explicit authorization from the eligible rockfish processor with whom that rockfish cooperative is associated as part of an inter-cooperative transfer of CQ under § 679.81(f)(1)(v) and (vi). With that change, no modification is required in this section.

Comment 67: Paragraph (i)(4)(iii)(F) of § 679.81 should prohibit transfers from a rockfish cooperative once that cooperative has submitted its termination of fishing declaration.

Response: NMFS disagrees. The intent of the termination of fishing declaration is that after that date no transfers of CQ could be received by a rockfish cooperative. Once NMFS has approved a termination of fishing declaration submitted by a rockfish cooperative, the total amount of CQ held by that rockfish cooperative is set to zero (see § 679.4(n)(2)(v)). Therefore, a rockfish cooperative would not have any CQ available for transfer to another cooperative. These requirements effectively prevent a rockfish cooperative from transferring any CQ to or from another rockfish cooperative. No change is required.

Comment 68: In § 679.81(i)(5)(ii)(A), delete ''not'' in the second to last line so that it reads, ''No member of a cooperative may exceed. . .''

Response: NMFS agrees and has removed the word ''not'' from § 679.81(i)(5)(ii)(A). This provision is intended to state that no member of a rockfish cooperative may exceed the CQ use cap applicable to that member. The word ''not'' negates that intent and is a typographical error.

Comment 69: In paragraph (i)(5)(ii)(B) of § 679.81, the total CQ should be the amount assigned to the person from transfers and the amount initially held from Rockfish QS.

Response: NMFS agrees and has clarified § 679.81(i)(5)(ii)(B) to provide that for purposes of CQ use cap calculation, the total amount of CQ held (used) by a person is equal to all pounds of CQ derived from the Rockfish QS held by that person and assigned to the rockfish cooperative, and all pounds of CQ assigned to that person by the rockfish cooperative from approved transfers. This change is consistent with the FMP and the intent of this provision as described on page 33054 of the preamble to the proposed rule (71 FR 33040).

Comment 70: Since a cooperative holds CQ directly only, the application of the individual and collective rule for indirect holdings in § 679.82(a)(3) is unnecessary. Use of the individual and collective rule could have some unintended consequences, particularly if a person owns shares that are eligible for two different cooperatives.

Response: NMFS agrees. A rockfish cooperative can only hold the CQ derived from the members of this cooperative. A rockfish cooperative cannot indirectly hold CQ and so the term ''individual and collective'' is not applicable and has been deleted from § 679.82(a)(3).

Comment 71: Paragraphs (a)(3) and (a)(6) of § 679.82 should be revised to clearly note that a rockfish cooperative is precluded from exceeding 30 percent of the CQ issued to the catcher vessel sector unless that cooperative qualifies for a ''grandfather'' exemption. The current structure of these paragraphs does not meet the intent of the grandfather provisions. The exemption to the use cap should apply only if the cooperative is eligible to receive in excess of 30 percent of the initial allocation of catcher vessel Rockfish QS.

Response: NMFS agrees. As worded, the provisions in the proposed rule at § 679.82(a)(3) would limit the ability of a rockfish cooperative to exceed 30 percent of the Rockfish QS pool allocated to the catcher vessel sector. This could inhibit the ability of a rockfish cooperative to form if the potentially eligible members of the rockfish cooperative held more than 30 percent of the Rockfish QS in the catcher vessel sector. To minimize the possibility of rockfish cooperatives being so limited, NMFS modified § 679.82(a)(3) to state that a rockfish cooperative may not hold or use an amount of CQ that is greater than the amount derived from 30.0 percent of the aggregate Rockfish QS initially assigned to the catcher vessel sector, unless the sum of the aggregate Rockfish QS held

by the eligible members of that rockfish cooperative is derived from legal rockfish landings held by those eligible members prior to June 6, 2005, and this results in Rockfish QS that exceeds the use cap. The rockfish cooperative will still be constrained by the sum of the use caps that apply to each member of the rockfish cooperative. With this change, modifications to § 679.82(a)(6) are not required.

Comment 72: Paragraphs (a)(5) and (a)(6) of § 679.82 are intended to prevent a processor from exceeding 30 percent of the catcher vessel sector allocation. The current exemption in (a)(6) appears to allow a processor to exceed the use cap if any member of the cooperative qualifies for an exemption from the use cap. It should provide that a processor can exceed that cap only if it would be associated with a cooperative comprised of members that receive in excess of 30 percent of the initial allocation of Rockfish QS.

Response: NMFS agrees. The intent of this provision is to limit the ability of a processor to receive more than 30 percent of the aggregate rockfish TAC assigned to the catcher vessel sector with a specific ''grandfather'' provision if the harvesters eligible to deliver to that eligible rockfish processor hold an amount of initially issued Rockfish QS that yields CQ in excess of the 30 percent processor use cap. NMFS has modified § 679.82(a)(5) to limit eligible rockfish processors to this grandfathered amount. With this change, modifications to § 679.82(a)(6) are not required.

Comment 73: Paragraph (a)(4) of § 679.82 should prevent a catcher/processor vessel from harvesting any amount greater than the amount of CQ attributable to the LLP license derived from that vessel. As currently written, it suggests that if the LLP license used on that vessel is allocated Rockfish QS in excess of the use cap, the use cap does not apply at all.

Response: NMFS agrees and has modified this provision to note that a catcher/processor vessel may not be used to harvest an amount greater than the amount derived from the Rockfish QS assigned to an LLP license that was used on that vessel prior to June 6, 2005. This change clarifies the intent of this provision.

Comment 74: In § 679.82(a)(6)(ii)(C), the reference to ''or have any CQ received by a cooperative by transfer attributed to that eligible rockfish harvester'' should restrict a rockfish cooperative from assigning CQ to a harvester limited by the Rockfish QS use cap.

Response: NMFS agrees. The intent of § 679.82(a)(6)(ii)(C) is to restrict a rockfish cooperative from assigning CQ to a cooperative member if that harvester is limited by the Rockfish QS use cap. This intent is unclear as worded in the proposed rule. NMFS has modified § 679.82(a)(6)(ii)(C) so that an eligible rockfish harvester may not receive any Rockfish QS by transfer or have any CQ attributed to that eligible rockfish harvester unless that harvester's holding of Rockfish QS are below the use cap.

Comment 75: Paragraph (a)(6)(ii)(C) of § 679.82 states that a person exceeding the ownership cap through the initial allocation of Rockfish QS cannot ''have any CQ attributed to that eligible rockfish harvester in a rockfish cooperative unless and until that person's holdings of aggregate Rockfish QS in that sector are reduced to an amount below the use cap.'' If the person is grandfathered for the initial Rockfish QS allocation they should receive CQ for that amount, but they cannot receive additional CQ. This seems to be indicated in § 679.82(a)(6)(iii), but this refers to a rockfish cooperative using CQ in excess of the use cap. Rockfish cooperatives do not have use caps, individuals do.

Response: NMFS has addressed the application of the CQ use cap in the response to Comment 74. NMFS notes that CQ is held by a rockfish cooperative and not by the members of the rockfish cooperative. The CQ use cap limits the amount of CQ that a member of a rockfish cooperative may attribute to that cooperative either by assigning his Rockfish QS to that rockfish cooperative, or by having CQ attributed to that cooperative member through an inter-cooperative transfer of CQ.

Comment 76: Paragraph (a)(6)(iii) of § 679.82 should prevent a cooperative from receiving CQ unless the CQ is held by an eligible rockfish harvester who was eligible for that cooperative prior to June 6, 2005.

Response: NMFS agrees. NMFS has modified § 679.82(a)(6)(iii) to clarify this provision by providing that a rockfish cooperative may use CQ in excess of the use cap only if that CQ is derived from the Rockfish QS assigned to an LLP license that was held by an eligible rockfish harvester prior to June 6, 2005, and who is eligible for that rockfish cooperative.

Comment 77: Paragraph (b)(2)(ii) of § 679.82 allows a person to enter the limited access fishery if they do not opt–out or join a cooperative. The quota should be allocated to the limited access fishery under those circumstances, but the person does not get to fish in the limited access fishery unless an application for the limited access fishery is completed.

Response: NMFS disagrees. If an eligible rockfish harvester failed to apply for a rockfish cooperative, limited access fishery, or the opt–out fishery, then NMFS would assign the TAC derived from that person's LLP license to the limited access fishery. These default provisions provide a reasonable opportunity for persons in either sector to continue to participate in the rockfish fishery if they choose not to participate in a cooperative. The opt–out fishery is applicable only to the catcher/processor sector. If NMFS allowed a participant in the catcher/processor sector who failed to apply to fish only in the opt–out fishery instead of the limited access fishery, NMFS would be treating the failure to apply differently between the two sectors. This would seem to foreclose harvest opportunities for only one sector without a clear distinction or need. No change has been made to the rule.

Comment 78: Paragraph (b)(5) of § 679.82 appears to be inconsistent with the Council motion that suggests that the use of halibut PSC in the limited access fishery should be limited to an amount which would have been allocated to vessels in the limited access had they not joined cooperatives.

Response: NMFS disagrees. The Council motion notes that ''harvesters may elect not to join a co-op, and continue to fish in an LLP/Open Access fishery. The LLP's share will be fished in a competitive fishery open to rockfish qualified vessels who are not members of a cooperative and must be delivered to one of the qualified processors.'' It is clear that the limited access fishery is allocated a portion of primary rockfish species, but allocations of secondary species and halibut PSC to the limited access fishery is not explicit. However, it is clear throughout the final EA/RIR and in the structure of the Program that the limited access fishery is intended to provide an opportunity for harvesters who do not wish to join a cooperative to continue to fish in the rockfish fisheries, but that secondary species would not be explicitly allocated (see Executive Summary of the final EA/RIR).

Rockfish cooperatives are intended to provide exclusive harvest privileges to specific groups of harvesters, and in the case of catcher vessels, require an association with a specific processor. If the limited access fisheries in the catcher/processor and catcher vessel sectors were provided a distinct halibut PSC allocations, then the potential exists for a small number of participants

in a limited access fishery to coordinate the harvest of their primary rockfish species and apportion this halibut PSC allocation among their members. In so doing, the limited access fishery could effectively create a cooperative that would be able to manage an exclusive halibut PSC allocation, receive many of the benefits of a rockfish cooperative, but forego many of the requirements that the Council recommended as a condition for operating as a rockfish cooperative (e.g., association with a specific processor). This is contrary to Council recommendations and the structure of this Program.

The limited access fishery does receive a halibut allocation in the sense that the limited access fishery will receive a portion of the halibut PSC that remains after allocation as CQ to the rockfish cooperatives. Rockfish cooperatives are allocated a specific amount of halibut PSC based on historic use by eligible rockfish harvesters. Historically, halibut PSC use in the rockfish fisheries has been debited from the third season halibut PSC apportionment to trawl gear in the deep-water complex. NMFS will deduct the sum of the allocations of halibut PSC CQ made to cooperatives from that third season allocation. The apportionment of halibut PSC at other times of the year to support other fisheries would not be affected by halibut PSC CQ allocations made under the Program. This is consistent with the intent of the Program to enhance rockfish harvest opportunities without adversely affecting other fishery participants. Under this management model, after deduction of halibut PSC for the rockfish cooperatives, the third season halibut PSC limit remaining is available to the limited access fisheries, the opt–out fishery, and non-Program fisheries (i.e., flatfish fisheries). This mechanism of halibut PSC management for the limited access fishery is similar to current management practices in which the rockfish fisheries and flatfish fisheries use the same third season halibut PSC apportionment to trawl gear in the deep-water complex.

Comment 79: Paragraph (d)(4)(iii) of § 679.82 limits the use of halibut PSC in certain fisheries. The wording of this provision should clarify that the halibut PSC sideboard actually limits directed fishing in specific flatfish fisheries based on the use of halibut PSC.

Response: NMFS agrees and has modified § 679.82(d)(4)(iii) to more clearly indicate the intent of this provision that specific flatfish fisheries in the GOA are subject to closure once a specific halibut PSC sideboard limit has been reached.

Comment 80: In § 679.82(d)(5)(ii)(C), the reference to paragraph (d)(5) is circular. It would be clearer to reference paragraph (d)(5)(ii)(B) of this section.

Response: NMFS agrees and has modified § 679.82(d)(5)(ii)(C) to include this reference to § 679.82(d)(5)(ii)(B). This comment clarifies that specific vessels would be subject to a sideboard limit but does not alter the intent of this provision.

Comment 81: The table at § 679.82(d)(6) should include the BSAI Pacific cod sideboard amount for the catcher vessel sector (which is 0.0 percent) as that amount has been calculated in the final EA/RIR. In § 679.82(e)(4), the provision addressing the Pacific cod sideboard amount for catcher vessels is unnecessary, if the sideboard amount is included in the table at paragraph (d)(6) of this section. If this provision is maintained, the algorithm for the sideboard should be corrected. The sideboard limit for Pacific cod should be the catch of the catcher vessel sector in July during the period from 1996 through 2002 divided by the catch of all trawl catcher vessels during the entire year during the years 1996 through 2002. Either include the sideboard percentage in the table in § 679.82(d)(6) or correct the method for calculating the sideboard percentage.

Response: NMFS agrees. NMFS has deleted catcher vessel specific sideboards for BSAI Pacific cod in § 679.82(e)(4) and placed the catcher vessel BSAI Pacific cod sideboard limit in the table in § 679.82(d)(6). NMFS has described the catcher vessel sideboard limit applicable to catcher vessels directed fishing for Pacific cod in the BSAI in a new § 679.82(d)(4)(iv). This change benefits the reader by providing a list of all sideboard limits in one section of the regulations.

By moving these provisions to § 679.82(d)(6), the provisions at § 679.82(e)(4) and (5) were made redundant and were deleted. The regulatory text in § 679.82(e)(5) was also redundant because NMFS will not establish a sideboard limit for the catcher vessel sector for BSAI Pacific cod because the sideboard limit is 0.0 percent. The sideboard limit of 0.0 percent for directed Pacific cod fishing in the BSAI for the catcher vessel sector was determined based on the final EA/RIR prepared for this action (see Table 38 in Section 2.5.15 of the final EA/RIR), and is not modified by this change. NMFS indicated on page 33056 in the preamble of the proposed rule (71 FR 33040) that the sideboard limits calculated in the EA/RIR/IRFA would be used to establish the sideboard limits applicable to the catcher/processor and catcher vessel sector. Table 9 in the preamble to the proposed rule (page 33059) notes that the BSAI Pacific cod catcher vessel sideboard is zero percent of the BSAI TAC.

Comment 82: Modify § 679.82(d)(8) to strike the reference to halibut PSC sideboard limits by each GOA management area and to provide for halibut PSC limits to be established for the entire GOA for the deep-water complex and shallow-water complex. The GOA sideboard limit amount should be the sum of the three GOA management area sideboard limits. When the sideboard limit is reached, the entire GOA would close to directed fishing for flatfish in the deep-water or shallow-water complex fisheries.

Response: NMFS agrees. At the time of final Council action on June 6, 2005, the Council recommended that halibut PSC sideboard limits should be administered based on a percentage of the total GOA halibut PSC sideboard limit rather than by specific limits for each GOA management area (See Section 9.1(b) of the Council motion recommending this action). This change in Council intent was not reflected in the proposed regulations.

NMFS has modified the table in § 679.82(d)(8) by summing the halibut mortality limits in each GOA management area in the shallow water complex for each sector to establish a shallow water halibut PSC sideboard limit for the GOA that is applicable to that sector.

Similarly, in § 679.82(d)(8), NMFS has summed the halibut mortality limits in each GOA management area in the deep water halibut PSC complex for each sector to establish a deep water halibut PSC sideboard limit for the GOA that is applicable to that sector.

Comment 83: Paragraph (d)(8) of § 679.82 should provide for the division of halibut PSC sideboards among rockfish cooperatives in the catcher/processor sector more clearly. The Council motion provides for the division of halibut PSC sideboard limits based on historic use. This is computed as the amount of halibut use of the vessels in the cooperative divided by the halibut use of all vessels subject to the sideboard multiplied by the GOA trawl halibut PSC sideboard limit.

Response: NMFS agrees. As written in the proposed rule, the provision at § 679.82(d)(8) did not clearly allocate a portion of the catcher/processor deep-water or shallow-water halibut PSC limit to a catcher/processor sector based on the historic halibut PSC use of the members of a rockfish cooperative. Section 9.2 of the Council motion notes that each rockfish cooperative in the

catcher/processor sector will be limited in the aggregate ''to the historic average halibut mortality taken by cooperative members in the target flatfish fisheries in the month of July by deep-water and shallow-water complex.'' NMFS has revised § 679.82(d)(8) to clarify the allocation of halibut PSC sideboard limits among catcher/processor rockfish cooperatives, the limited access fishery, and opt–out fishery.

Comment 84: In § 679.82(d)(9)(i)(A) and (B), the reference to (d)(1)(ii) is unclear. It seems to reference certain fisheries, but section (d)(1)(ii) contains no list of fisheries.

Response: NMFS agrees. The references in § 679.82(d)(9)(i)(A) and (B) should be to the list of flatfish fisheries in § 679.82(d)(4)(iii) which are subject to closure for directed fishing if there is not a sufficient amount of halibut PSC sideboard limit. The reference to § 679.82(d)(1)(ii) is incorrect. NMFS has corrected this citation to § 679.82(d)(4)(iii).

Comment 85: In § 679.82, halibut PSC use in the limited access fishery should not be counted against the halibut PSC sideboard limit. In § 679.82(d)(9)(iii), the halibut catch from the Central GOA rockfish fishery is not included in calculating the sideboard amount, it should be excluded from the sideboard accounting. When determining the halibut PSC sideboard limits, halibut PSC use in the Central GOA rockfish fisheries was not used in the calculation. To administer the sideboard, halibut PSC use in the limited access fishery should be distinguished from halibut PSC use in other non-Program fisheries (e.g., flatfish fisheries). The simplest way to make this distinction may be to require limited access fishery vessels to declare their target (i.e., either limited access fishery or other non-rockfish fisheries) prior to fishing during the time period when the limited access fishery is open. Such a declaration would simplify catch accounting in general. NMFS should require a declaration of rockfish participation from limited access participants to simplify administration of halibut sideboards and accounting in the rockfish fishery.

Response: NMFS agrees in part. Section 2.5.15 of the final EA/RIR prepared for this action, and Section 9.2 of the Council motion recommending this action indicate that the halibut mortality in the Central GOA that is used in the limited access fishery would not be used to determine the halibut PSC sideboard limits that apply to the catcher/processor and catcher vessel sector. These sections of the final EA/RIR also clarify that catch made under a CQ permit would not apply against a sideboard limit annually specified for a rockfish cooperative. NMFS has modified § 679.82(d)(9)(iii) to note that halibut PSC used while fishing under a CQ permit or in a limited access fishery will not be debited against the sideboard limit established for that sector. NMFS also modified § 679.84(g)(3) and (4), which contains a reference to catch accounting for groundfish and halibut PSC, to not debit catch harvested while fishing under a CQ permit or in the limited access fishery against the sideboard limit that is established for that sector or rockfish cooperative.

NMFS disagrees that a declaration or check-in procedure is required for the limited access fisheries. Based on expected TAC available to the limited access fishery, NMFS anticipates that the limited access fishery will have a limited duration. If a vessel has registered for the limited access fishery its harvests of primary rockfish species starting on July 1 will be deducted from the limited access fishery TAC assigned to that sector. Once the limited access fishery TAC for all primary rockfish species has been reached, or on the date it has been forecasted to be reached, the limited access fishery will be closed. If a vessel that had been fishing in the limited access fishery continues to fish in the GOA in July, any of its groundfish subject to a sideboard limit, and any halibut PSC use will be deducted from the sideboard limits applicable to that sector.

Comment 86: Paragraph (f)(4)(ii) of § 679.82 should provide that for catcher/processor cooperatives that begin fishing on their CQ permit prior to July 1, the stand down should last only until the earlier of either when 90 percent of the cooperative allocation is fished, or July 14.

Response: NMFS agrees. Section 9.2 of the Council motion recommending this action does note that the stand down period applicable to catcher/processor vessels named on an LLP license with more than 5.0 percent of the Pacific ocean perch QS assigned to a catcher/processor rockfish cooperative should begin on July 14 or when the 90 percent of the CQ assigned to that rockfish cooperative has been fished, whichever occurs earlier. NMFS has modified § 679.82(f)(4) and (f)(4)(i).

Comment 87: The proposed rule does not seem to clearly identify the rules of participation in the entry level fishery. Entry level processors do not seem to be required to apply for the entry level fishery, although application/registration might simplify management as well as clarify markets for entry level vessels. In addition, it should be clear that if a processor tells an entry level harvester that he has a market for his catch, it does not bind the harvester to deliver all catch to the processor, nor the processor to accept all catch from that harvester.

Response: Fish harvested from the entry level fishery may be delivered to any processor that is not an eligible rockfish processor as is noted in § 679.83(a). Rather than requiring processors to register, NMFS intends to provide maximum flexibility to entry level harvesters to allow them to deliver to any eligible entry level processor they choose. The annual application to participate in the entry level fishery under § 679.81(e)(7)(i)(D) only requires that harvesters that wish to participate in an entry level fishery have a statement from an eligible entry level processor that they have a market for their product, but does not otherwise limit the entry level harvester to deliver only to that processor. No change in the regulations has been made.

Comment 88: As was pointed out during the Council development of the Program, NMFS would like to maintain the authority to not open the entry level fishery under certain circumstances, such as when more harvesters sign-up to fish than NMFS deems reasonable for the size of the TAC. However, this is not good news for the harvesters and processors hoping to participate in the entry level fishery. A closed entry level fishery is contrary to intent of the Council and the enabling legislation requiring an entry level fishery. Several solutions were suggested during the Council process, including a lottery among potential harvesters, with the understanding that there would be an attempt to arrive at a workable solution. The discussion about this issue in the preamble of the proposed rule indicates that NMFS has no solution to this potential problem. Develop a method to open both the trawl and non-trawl entry level fisheries, no matter the TAC size.

Response: As the Commenter notes, the entry level fishery receives a small allocation of primary rockfish TAC. This allocation should be sufficient to provide a limited fishery for entry level participants. NMFS' ability to open an entry level fishery would only be curtailed if large numbers of participants with sufficient harvest capacity register to fish for the fishery. Under alternative methods of management (i.e., IFQ fishing), small allocations may be more manageable, however, the entry level fishery was designed to provide an opportunity to persons not otherwise eligible for the Program, and not to institute complex quota-based management for a small

amount of TAC for a two-year Program. NMFS does not anticipate that large numbers of participants will choose to participate in the entry level fishery due to the small amount of TAC available for harvest. Therefore, NMFS anticipates to be able to provide harvest opportunities for the entry level fishery.

Comment 89: Clarify the likelihood of the unavailability of halibut PSC closing the entry level fisheries.

Response: NMFS allocates halibut PSC on a seasonal basis for various gear types to provide adequate fishing opportunities for fisheries that use halibut PSC throughout the year. Although halibut PSC use varies on an annual basis, and halibut PSC use may constrain directed fisheries for specific gear types during certain times of the year, it is unlikely that halibut PSC use would limit the entry level fishery throughout the entire period when it may occur (May 1 through November 15 for trawl gear, and January 1 through December 31 for longline gear). Given the small amount of primary rockfish species TAC allocated to the entry level fishery, NMFS anticipates limited halibut PSC use in the entry level fishery, and a low likelihood that halibut PSC use in other fisheries would foreclose the opportunity for an entry level fishery.

Comment 90: The provisions in § 679.84(c) requiring vessels that opt–out of the Program to have observers and monitoring at the same level as vessels targeting rockfish would impose huge economic and compliance burdens on companies not electing to participate in the Program. Requiring the expense of increased observers and costly monitoring equipment, strictly for purposes of monitoring the sideboard limit applicable to these vessels in July, seems extreme. Opt–out vessels do not receive an individual allocation and fish off the general sideboard limit for the catcher/processor sector (the largest sideboard amount). Opt–out vessels do not need this level of monitoring and many of them are unable to support it. The purpose of the opt–out fishery is to allow vessels which qualified for the Program, but are not dedicated rockfish boats to remain unaffected by the Program. Why such onerous measures should apply to the opt–out sector is not at all apparent. Consider reducing the monitoring burden to opt–out vessels.

Response: NMFS agrees in part. NMFS modified the regulations in § 679.7(n)(2)(iii) to clarify that catch monitoring requirements in § 679.84(c) through (e) during July do not apply to catcher/processor vessels assigned to the opt–out fishery. Instead, NMFS has inserted a new § 679.7(n)(2)(iv) that establishes a prohibition if a catcher/processor vessel assigned to the opt–out fishery fails to follow catch monitoring requirements specific to the opt–out fishery in a new paragraph § 679.84(d). NMFS also clarified the application of observer coverage levels in § 679.50(c)(7)(i)(C) by removing its applicability to catcher/processor vessels assigned to the opt–out fishery and inserting a new § 679.50(c)(7)(i)(F) that specifies observer coverage levels for vessels in the opt–out fishery. Finally, NMFS modified § 679.84(c) to remove its applicability to catcher/processor vessels in the opt–out fishery. NMFS inserted a new § 679.84(d) with catch monitoring provisions specific to catcher/processor vessels in the opt–out fishery, and renumbered § 679.84(d) through (f) as § 679.84(e) through (g).

As envisioned by the Council, vessels could choose to opt–out of the Program (opt–out vessels). Opt–out vessels do not receive allocations of primary rockfish species or secondary species but are subject to sideboard limits under the Program. Sideboard fisheries will occur in July and catch of target species will be monitored at the fleet level. However, in these sideboard fisheries, halibut PSC will likely be a limiting factor and thorough halibut PSC accounting is needed to manage the July sideboards. If halibut bycatch mortality is higher than the average mortality encountered during the qualifying years, participants would not be able to fully harvest their sideboard limits of the target species. Participants will have a strong incentive to under report halibut bycatch. Catch composition data collected by an observer onboard a vessel is the best source of information for NMFS' accounting of PSC. For this reason, the monitoring tools appropriate to ensure observers are able to obtain quality samples of halibut PSC are warranted.

NMFS reviewed the monitoring and enforcement standards in the proposed rule and made several modifications to meet its needs for accurate catch accounting for the sideboard limits applicable to opt–out vessels. These standards recognize the intent of the Council to subject opt–out vessels to sideboard limits, while still providing adequate opportunity for those vessels to continue to be used in other non-central GOA rockfish fisheries. Monitoring standards that NMFS is applying differ from those applied to sideboard management for catcher/processor vessels participating in cooperatives because each cooperative will receive a sideboard limit that will require more intensive management. NMFS has modified the monitoring and enforcement regulations applicable to opt–out vessels. Opt–out vessels must maintain 100 percent observer coverage, are prohibited from mixing hauls inside the bin, must maintain bin monitoring, and may not allow fish on deck outside the codend. Justification for these specific monitoring provisions is provided below.

NMFS currently bases its calculation of halibut PSC for catcher/processor vessels on basket samples of approximately 300 kilograms (approximately 660 pounds) or less, depending on the time and space available to the observer. Catch composition data are extrapolated (the term commonly used is ''expanded'') to determine halibut catch for the entire haul. The sampled hauls are extrapolated to determine the quantity of halibut for the unsampled hauls on a trip. NMFS then calculates the halibut catch rate from the sampled hauls for each directed fishery. These rates are then applied to all unobserved vessels to determine total halibut mortality. The degree to which a given quantity of halibut is expanded varies enormously depending on the fraction of observed hauls and the fraction of sampled catch in the observed hauls. In order to reduce this extrapolation and thereby increase the reliability of halibut PSC rates, 100 percent observer coverage is required aboard the opt–out vessels.

Because the distribution of organisms by size and species often differs among hauls, an aggregation of hauls (i.e., mixing two or more hauls) could create errors in the calculation of total groundfish catch. For example, if a vessel mixes hauls from two different areas or depths, species catch composition and size could be significantly different between these hauls, and a composite sample may not be representative of each individual haul. Any errors would be exacerbated as the composite sample is expanded to represent the total weight of the mixed hauls.

Adequate accounting of the quota species under the Program will rely heavily on observer species composition samples. NMFS must have confidence that the data collected are representative of actual catch and that potential sources of bias have been minimized. Because the mixing of hauls could create unacceptable data errors in quota fisheries as described above, NMFS must prohibit the mixing of hauls.

Additionally, observers face many sampling difficulties when hauls are not kept separate inside fish bins. When multiple hauls are mixed, it is sometimes not possible for the observer to determine which catch is from a

particular haul and the observer may not collect a discreet sample from each of the mixed hauls. As noted above, bias introduced into the sample by mixing of hauls is exacerbated when the sample is expanded to the weight of the entire hauls. Observers have several sampling tools available to them to determine the total catch of multiple mixed hauls. However, all of these tools result in reduced accuracy and precision for total catch determinations, especially when each of the mixed hauls has significantly different actual catch compositions. For these reasons, opt–out vessels subject to CGOA sideboard limits during the month of July are prohibited from mixing hauls.

The prohibition of mixing hauls could be accommodated under this Program in a number of ways that would not result in loss of fish quality or maneuverability concerns. For example, under the Program, vessels could slow fishing effort and the frequency with which gear is deployed to minimize the amount of time the codend must be short-wired. Also, vessels have the ability to join cooperatives under this Program and be given a direct allocation of a quota species, thereby removing the race for fish.

Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of halibut document the practice of biasing observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS expects that opportunities to bias observer samples will be reduced under the Program in comparison to the status quo because of the enhanced monitoring provisions established under this rule.

The observer must be able to view all the activities of crew inside the bin that occur before the observer collects unsorted catch. This requirement would help the observer ensure his or her sample consists of unsorted catch, and that no presorting activities are occurring. The vessel is required to choose, and have approved by NMFS, one of three options to meet this requirement.

These options are:

• *Limit tank access option.* No crew would be allowed inside the bin unless the flow of fish has been stopped between the tank and the location where the observer collects unsorted catch, all catch has been cleared from all locations between the tank and the location where the observer collects unsorted catch, and the observer has been given notice that vessel crew must enter the tank. Also, it would be required that the observer is given the opportunity to observe activities of the people in the tank. Industry representatives are concerned that a total ban on crew entering the fish bin would prevent the flow of fish in rockfish fisheries or in cases where mud prevents the natural flow of fish from the bin. Therefore, when informed by the observer that all sampling activities are completed for any haul, crew would be allowed to enter the bin without meeting the requirement of stopping the flow of fish and clearing catch between the tank and location where the observer collects unsorted catch. These requirements would allow observers to monitor activities within the bin or tank while maintaining sample collection protocols.

• *Line of sight option.* From the locations where the observer sorts and weighs samples and collects unsorted catch, an observer must be able to see all areas of the bin where crew could be located. This requirement may be accomplished by creating a viewing port inside the bin, and must be approved by NMFS.

• *Video option.* A vessel may provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin where crew could be located. The video data must be maintained and made available to NMFS upon request for no less than a 120 day period. NMFS would approve the installation of viewing ports inside the bins.

If the line of sight option or the video option fail to meet the standard of allowing the observer to view all the activities of crew in the bin (for example, if a camera system becomes inoperable during any fishing trip), then the vessel must revert to the limit tank access option.

Unsorted catch may not remain on deck outside of the codend without an observer present, except for fish accidentally spilled from the codend during hauling and dumping. NMFS believes that fish that remain in a codend do not present a large opportunity for presorting activities. However, unsorted catch on deck outside of a codend could easily be presorted.

Flow scales and observer sample stations assist observers to obtain accurate haul-by-haul accounting of total catch. However, NMFS will make fishery closure decisions at the sector level (i.e., the joint opt–out and limited access sideboard limit) rather than for a specific rockfish cooperative. As a result, flow scales and observer sample stations are not required for the July sideboards for vessels that chose to opt–out of the Program. Given the other catch monitoring provisions described above, NMFS will be able to rely on observer estimates of total catch for catch accounting. Inaccuracies associated with observer estimates as well as any inaccuracies that result from the observer not having a sample station, would be expanded to the fleet wide level and averaged over the fishery. Because observer sample stations are no longer required, opt–out vessels are not required to provide space for at least 10 observer baskets.

Comment 91: If a vessel has opted out it is only fishing on sideboards in the month of July. From the perspective of vessels whose sideboards could be encroached upon, 100 percent coverage for sideboard species in July should be adequate.

Response: NMFS agrees. This comment has been addressed in the response to Comment 90.

Comment 92: The modifications to the factory of catcher/processors to accommodate this two year pilot Program regulations would not allow a catcher/processor factory to work efficiently in other non-rockfish fisheries. The factory configured for the Program will not work efficiently for other fisheries.

Response: NMFS' catch accounting needs remain the same whether for a two year Program or for one that would be in place longer. Most of the modifications to a catcher/processor factory required under the Program are also required under Amendment 79 to the FMP for Groundfish of the BSAI (71 FR 17362, April 6, 2006). Amendment 79 establishes a groundfish retention standard (GRS) which requires a minimum percentage of groundfish catch to be retained to reduce discarding. To be effective, Amendment 79 required changes to monitoring and enforcement provisions to accurately track discards. The final rule implementing Amendment 79 will be effective on January 20, 2008. Amendment 80 to the FMP for Groundfish of the BSAI, which was recommended by the Council in June 2006 and is under development and review by NMFS, also would implement similar monitoring and enforcement requirements. Amendment 80, if approved and implemented, would establish a quota-based management program for several species in the BSAI and would require measures adequate to accurately track species specific catch and discards.

The majority of the vessels eligible for the Program are subject to the requirements of Amendment 79 when fishing in the BSAI, and all of the vessels eligible for the Program would be subject to similar monitoring and

enforcement provisions when fishing under Amendment 80, if approved. Therefore, factories configured for the Program will also meet factory modification requirements for the majority of the other fisheries in which the same vessels may participate beginning in 2008.

If vessel owners wished to forego the factory modifications required by this Program, several viable options exist. Vessel owners could join a cooperative and another vessel that meets the monitoring requirements could harvest that cooperative's CQ. A vessel owner could also join a cooperative which would then lease their CQ to another cooperative. Additionally, vessel owners could choose to opt–out of the Program and be subject to reduced monitoring requirements, as detailed in the response to Comment 90.

The EA/RIR notes that ''given the complexity of the [Program] and the limited time period for its effectiveness, NOAA Fisheries intends to manage the fishery to reduce costs and the complexity of quota management.'' NMFS has attempted to develop a monitoring and enforcement program that is cost-effective, manageable, and effective. The EA/RIR also notes that:

> Share-based management programs can increase the incentive of participants to misreport and high grade catch, while at the same time increasing the burden on managers to provide highly defensible estimates of catch, especially when those estimates directly impact quota holders. NOAA Fisheries has dealt with these issues by clearly articulating goals for the management of share-based fisheries and imposing new and more stringent monitoring and observer requirements as these programs have been developed. All of these programs have been unique in terms of the fleet and fisheries rationalized, and interventions developed for the programs have varied as well. The Central Gulf of Alaska rockfish pilot program is no different in this regard and development of a suitable monitoring program will involve the development of new tools to ensure defensible catch data is collected to minimize unreported discard of allocated species catch.

The monitoring and enforcement provisions in this rule for vessels in rockfish cooperatives and the limited access fishery were designed to meet the multiple objectives of NMFS' catch accounting and reporting needs. The rule has not been modified.

Comment 93: The provision in § 679.84(c)(1) would prohibit vessels from bringing onboard any additional catch of fish until the prior net's fish had cleared the fish bin and passed over the scale. If this rule is implemented as written we will likely be forced to fish while processing and retain the full net off bottom and short-wired. Fishing in this manner drastically reduces the quality of fish in the net being towed. Rockfish are sensitive to losing color (i.e., value) and flesh quality from being held for long periods of time in short-wired nets, we feel it is a poor fishing practice. Second it could create a safety problem related to maneuvering in close proximity to other vessels.

Response: NMFS has justified the prohibition for mixing hauls in the response to Comment 90. Specifically, if a vessel mixes hauls from two different areas or depths, catch composition and size could vary among hauls, and a composite sample may not be representative of each individual haul. Any errors would be exacerbated as the composite sample is expanded to the total weight of the mixed hauls.

Adequate accounting of the species under the Program will rely heavily on observer species composition samples. NMFS must have confidence that the data collected are representative of actual catch and that potential sources of bias have been minimized to the greatest extent practicable. Because the mixing of hauls could create unacceptable data errors as described above, NMFS must prohibit the mixing of hauls.

The prohibition of mixing of hauls under the Program could be accommodated in a number of ways that would not result in loss of fish quality or maneuverability concerns as detailed in the response to Comment 90.

Comment 94: Catcher/processors should be allowed to install two flow scales off existing conveyors, just forward of each fish bin. This would allow the flow of fish to move over the scales and onto the sorters on both sides of the bins. This would limit potential constraints on production that one operational line may cause. The observer could monitor the opposite side from where he/she was standing through the installation of video monitoring equipment, giving the observer 100 percent visual coverage of all fish prior to its entering onto the scales. Observer random samples could be taken from either conveyor.

Response: NMFS agrees that two flow scales are acceptable under certain circumstances. Regulations under § 679.84(c)(4) only require that a vessel not have more than one operational line for the passage of all unsorted catch between the scale used to weigh total catch and the single location where the observer collects his samples. The vessel may divide those lines both upstream and downstream of the flow scale in order to increase processing capacity or flexibility. This requirement will only result in a production-reducing constraint in the event that the speed with which fish could pass over the scale was a limiting factor.

NMFS notes that a reduction in throughput resulting from the use of a single scale is highly unlikely in these fisheries and the vessel may have multiple lines both upstream and downstream of the flow scale in order to increase processing capacity or flexibility. This requirement will only result in a production-reducing constraint in the event that the speed with which fish could pass over the scale was a limiting factor. Given that NMFS-approved flow scales are capable of weighing catch at rates of 60–80 metric tons per hour, NMFS does not believe that such a bottleneck would be created. NMFS also notes that all the catcher/processors and motherships participating in the AFA pollock fishery are able to effectively pass fish across a single point in spite of the fact that factory throughput in these vessels is often considerably greater than the throughput of any of the catcher/processors regulated under the Program.

Regulations at § 679.84(c)(4) do not limit the ability of a vessel to use multiple scales simultaneously, provided that each scale is used to weigh separate hauls and the live bin configuration keeps each haul flowing over the scale separately. If two hauls were kept separate and two scales were in use at the same time, by regulation, a separate observer and sample station that met the requirements described at § 679.28(d) would be required. The commenter's suggestion to allow a single observer to monitor both lines in conjunction with video monitoring is not feasible because hauls are stratified to an unknown extent inside the live bin, the samples taken from different flow scales also would not be representative of the catch for the entire haul, and the samples taken from the different sides would thus not be representative of the total catch.

Comment 95: Because there is no regulatory justification for applying the monitoring and enforcement requirements to the opt–out fishery, the agency should reconsider its position on this matter and restore the Council's original recommendation.

Response: NMFS disagrees that there is no regulatory justification for applying monitoring and enforcement standards to catcher/processor vessels that participate in the opt–out fishery. See the response to Comment 90, which addresses modifications to the requirements applicable to catcher/processor vessels in the opt–out fishery, and responses to Comment 119 and the comment on the IRFA under the

classifications section, which address the regulatory justification for these monitoring and enforcement provisions.

Comment 96: In § 679.84, the change in observer coverage for catcher vessels subject to an aggregate sideboard is inconsistent with monitoring provisions for the AFA catcher vessel sideboards. The AFA trawl fleet sideboard provisions are managed at the aggregate level. This fleet has halibut mortality cap sideboards by season and by fishery complex in the GOA and no additional observer coverage was required for this fleet to manage these halibut caps. The rockfish catcher vessel fleet should not be held to a higher standard than the AFA fleet. To help the agency, the industry may be willing to provide timely reporting for the flatfish catch and observer rates through a self reporting system on a trip-by-trip basis to the inter-cooperative manager, if the observer requirements stay at 30 percent. This system would be much faster and time sensitive then present agency tools and this self-reporting system would foster a joint industry and NMFS management approach. Consider reducing monitoring burden to vessels subject to the aggregate catcher vessel sideboards.

Response: NMFS disagrees. Observer coverage for the AFA fleet was developed for a different fishery, and a different group of vessels with different expected behaviors than catcher vessels participating in the Central GOA flatfish fishery in July. Specifically, NMFS anticipates that the vessels that are subject to sideboards in the Program will fully harvest their sideboard limits. This has not been the case historically for the AFA sideboard fisheries. In particular, several of the vessels subject to the Program sideboard limits are expected to fish in the shallow-water complex and fully utilize the shallow-water halibut PSC limit assigned to the catcher vessel sector. Because the flatfish fisheries are constrained by the halibut PSC sideboard limit, halibut are required to be discarded, and halibut PSC estimates must be derived from observer coverage. NMFS must obtain timely observer data to ensure that the halibut PSC sideboard limits are not exceeded.

The purpose of sideboard management is to protect those not receiving the benefits of the Program and other members of the Program from being adversely affected. Vessel monitoring system (VMS) information gathered from catcher vessels in the Central GOA rockfish fisheries suggests that fishing behaviors differ when an observer is not onboard a vessel. One hundred percent observer coverage is needed to ensure all different types of fishing activities and associated catch are observed.

Additionally, vessels may engage in activities that do not represent their fishing activities when an observer is present. As an example, vessels may set and immediately retrieve a net before midnight and then again after midnight to obtain observer coverage for two days. Further, because it is likely that vessels will cooperate, it is reasonable to assume that vessels may also cooperate when fishing under a sideboard limit. This may induce vessels to select specific vessels to carry observers and fish in areas with halibut PSC rates that are lower than those that would be encountered in other areas, which would effectively lower halibut PSC rates below those that would be observed if more complete observer coverage were available. This technique would effectively prolong fishing activities because the halibut PSC rate is low and the sideboard limit would be reached later.

Further, vessels with limited observer coverage requirements could adjust the timing of their observer to maintain favorable, but inaccurate halibut PSC rates. For example, if limited observer coverage and data are available from the Central GOA flatfish fisheries in the beginning of July, information on halibut PSC use rates must be derived from other sources. The proxies for the halibut PSC use rate in the flatfish fishery may differ significantly from the actual rates that would be observed. This is particularly true in cases where NMFS is using data from other target fisheries, or from other regions of the GOA. Since the limiting factor for the July sideboard fisheries is available halibut PSC, timely and accurate PSC information at the vessel-specific level is needed to manage the fishery.

Observer data collected from a subset of vessels under these conditions are not reflective of conditions that are likely on unobserved vessels and have limited value to the management of the fishery under the Program. Without a mechanism in place to evenly distribute observer coverage throughout a season among vessels and areas, and to ensure observer samples collectively represent true fishing behaviors for the fleet, no other option currently exists than 100 percent observer coverage. The rule has not been modified.

Comment 97: Paragraph (c)(9)(i)(E) in § 679.84 is inconsistent with paragraphs (c)(9)(i)(A) through (D). This paragraph should be revised to require that a catcher/processor meet the requirements of paragraphs (c)(9)(i)(A), (B), (C), and (D) or (E).

Response: NMFS agrees that, in the proposed rule, § 679.84(c)(9)(i)(E) is inconsistent with § 679.84(c)(9)(i)(D). NMFS has modified the catch monitoring provisions applicable to monitoring fish bins onboard catcher/processor vessels so that an observer should either observe operations in the bin as required by § 679.84(c)(9)(i)(D), or notify the vessel operator that all sampling has been completed and bin monitoring is no longer required, as required by § 679.84(c)(9)(i)(E). NMFS has also modified § 679.84(c)(9)(i) to note that the vessel operator must comply with the conditions of § 679.84(c)(9)(i)(A) through (D), or § 679.84(c)(9)(i)(A) through (C) and (E).

Comment 98: Paragraph (c) of § 679.84 states that monitoring and enforcement requirements apply at all times that a catcher/processor has fish on board that were harvested under a CQ permit or in the limited access fishery or while subject to sideboards (as in the opt–out fishery in July). This requirement would mandate either that the vessel offload after completing the rockfish fishery, or carry the additional monitoring and enforcement coverage into its next fishery. Either requirement is excessive and unnecessary. Offloads are extremely expensive in terms of fuel to and from the offload point, lost fishing time, etc. Once the vessel has completed the rockfish fishery it should no longer be subject to those monitoring and enforcement requirements. The coverage during the fishery is more than adequate to monitor how much fish was caught during that time.

Response: NMFS disagrees. Full offload will not be required after completing fishing in a Program fishery and, as the commenter notes, a vessel owner may choose between the cost of continued compliance with the monitoring and enforcement requirements or the cost of a premature offload. NMFS also notes that many of the monitoring and enforcement costs (continued weighing of all catch, continued availability of an observer sampling station) will not increase significantly if extended for the remainder of a trip. Continued high level observer coverage for non-rockfish portions of the trip may impose significant costs on the vessel. However, given that the vessel will be required to return to port in order to drop off extra observers in any event, the additional fuel costs associated with an early offload should be minimal. Further, the potential loss of fishing time can be mitigated by the increased flexibility in scheduling fishing activities afforded by the Program.

The Program will implement harvest restrictions for multiple species while fishing in the GOA. Vessels subject to the Program also could simultaneously harvest fish in the GOA under several other different management programs. Without adequate monitoring and enforcement provisions it would be difficult to account for fish under each possible scenario. For example, a vessel may choose to target fish subject to open access management, and then target fish subject to the Program during the same trip. Each of these species groups could be subject to differing harvest limitations, including MRAs. This necessitates separate accounting of catch for each specific program and purpose. NMFS must be able to ensure compliance with regulations governing each fishery and there must be an authoritative record of the amount of fish harvested under the Program.

The monitoring objectives and management structure are different between quota fisheries and non-quota fisheries, and switching monitoring programs mid-trip would create significant enforcement challenges. For example, if primary rockfish species or sablefish harvested under Program and non-Program fisheries were combined in an offload without the continued monitoring provisions, it would be impossible to verify non-Program catch from Program catch. Consequently, monitoring standards would need to remain in place for a vessel subject to the Program until the vessel offloaded all the Program catch.

Comment 99: Paragraphs (c)(9)(iii)(A) through (D) of § 679.84 requires storage of all video data from an entire trip for no less than 120 days after the start of the trip. If it is sufficient to have an observer watch activities in the tank (under the other two options) and the observer has a video monitor at their work station (section G), why is it necessary to record and store the video? There are concerns about the confidentiality of video data, particularly since this would be a ''voluntary'' collection. If an observer's statement of what they observed is sufficient in the other options, it should be sufficient with the video option. There should be no requirement to store or retain the video data.

Response: NMFS disagrees. Observers will be required to complete other duties and will not be able to monitor the video output at all times. If the video is recorded, they will be able to review the video at a later time to ensure no presorting occurred during their sampling. Also, observers may not be aware of all potential violations that may have occurred on the vessel and may only become aware of them during the debriefing process. The video data will be used as a tool to verify the information the observer provides during their debriefing. One of the goals of this Program is to determine the feasibility of a large scale GOA rationalization project. NMFS needs to evaluate how the video system functions aboard each of the vessels.

See response to Comment 100 for confidentiality of video data concerns. This collection would not fit under ''voluntary'' collection. If NMFS requests the video data it must be submitted.

Comment 100: The costs of installation and maintenance of a video monitoring system for a two year program, based on unfounded assumptions, are excessive. If we install a video monitoring effort as prescribed by the regulations, how will NMFS exercise custody and control of the video. Will the video belong to our company even after we provide it to NMFS? Can the video be used in a court of law against our company?

Response: NMFS believes a substantial enforcement need exists to monitor crew activities within fish bins. A video monitoring system is one of three options designed to meet this need (see response to Comment 90). Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of halibut highlights behavior that biases observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. Given the nature of this quota fishery, additional incentives may exist to sort limiting PSC or target species, particularly halibut, prior to an observer collecting a species composition sample. This potential was described in the preamble to the proposed rule (71 FR 33068). NMFS expects that opportunities to bias observer samples will be reduced under the Program in comparison to the status quo because of the enhanced monitoring provisions established under this rule. The EA/RIR/IRFA prepared for this action described the anticipated costs of a video monitoring system, if the vessel owner chooses the video option to meet the bin monitoring requirements. NMFS considers these costs reasonable compared with the expected reductions in bias introduced into observers' samples.

Video data collected as a requirement of regulations belong to the vessel owner and, according to regulations at § 679.84(c)(9)(iii)(D), must be retained onboard the vessel for 120 days. These video data must be submitted to NMFS when requested. When NMFS takes possession of these data, NMFS will maintain them for analytical or enforcement purposes within the confidentiality processes required by law.

NMFS agrees that there are confidentiality issues associated with the video surveillance requirements. Were a surveillance video requested by the public, NMFS would apply certain laws controlling the release of information it possesses. These laws include the Freedom of Information Act, the Trade Secrets Act, and the Magnuson-Stevens Act. According to Magnuson-Stevens Act Section 402(b), information that is submitted to NMFS pursuant to a requirement under the Act is considered confidential. Additionally, the Freedom of Information Act and Trade Secrets Act may prevent release of certain commercial information, which may include video data. In addition to the statutory protections, NMFS complies with regulatory guidelines at 50 CFR 600.415 *et seq.*, which control collection, handling, and disclosure of confidential fisheries information. Although confidential fisheries data are not publicly disclosed, legal guidelines do permit data release in aggregate form that does not reveal the identity of the person submitting the information or result in competitive harm. The commenter should consult their attorney for cases involving video data requested as part of a lawsuit against the company.

Comment 101: Paragraph (c)(9)(iv) of § 679.84 gives an observer the authority to insist on having no person in the tank if the observer ''determines that a monitoring option selected by a vessel. . .fails to provide adequate monitoring of all areas of the bin where crew could be located.'' An observer could abuse this discretion by insisting that every inch of the tank be visible from the observer station, which is clearly not necessary or possible. The observer should be able to challenge the viability of the monitoring plan and document their concerns without forcing the vessel to operate without a person in the tank.

Response: NMFS will certify a bin monitoring method that meets all regulatory requirements during the annual observer sample station inspection required under § 679.28(d). Vessels that choose to opt–out of the Program are not required to have an observer sampling station, but must contact NMFS to arrange to certify their bin monitoring method as required under § 679.84(c)(4)(v). Documentation relating to this certification is required to remain aboard the vessel while the vessel is engaged in fishing activities.

NMFS will use photographs and diagrams to provide the views of the bin for the line of sight option or the video option. Any portions of the bin that do not need to be monitored will be noted on the certification. If at any time the observer has doubts about the applicability of bin monitoring requirements, they must consult the sample station or bin monitoring certification and verify that the bin monitoring differs from the certification. Any decision made by the observer will be made in consultation with their NMFS inseason advisor. The rule has not been modified.

Comment 102: The provision in § 679.84(c)(2) that requires a large new and costly observer sampling station to be installed as a part of a two year rockfish demonstration program is not warranted or practical. The costs associated with the installation and major modifications to the existing vessel's factory are not justified nor could cost be amortized over a two year program.

Response: NMFS disagrees. Although this Program is intended to be a pilot project for the development of future GOA rationalization initiatives, the interim status of the Program does not obviate the need for adequate monitoring and enforcement. Because this Program is intended to test numerous aspects of multispecies quota management in the GOA, adequate monitoring and enforcement standards are essential for a comprehensive review. Further, vessels subject to this Program are subject to the same sample station requirements as in Amendments 79. This was done in part to reduce costs incurred by catcher/processors that also participate in the BSAI. For additional discussion, see the response to Comment 90.

Observer sample stations facilitate the collection of quality unbiased species composition samples. Each catcher/processor vessel choosing to fish for a rockfish cooperative or in the limited access fishery will be required to provide a location for observers to collect samples. Under the Program, observer samples will be used for catch accounting of quota species.

The proposed rule and the final EA/RIR, discuss the need for haul-by-haul catch monitoring standards to monitor and support this Program. NMFS' ability to adequately account for quota catch would be severely compromised or impossible under current regulations because these regulations do not provide the information needed to determine the haul-by-haul accounting of quota catch. NMFS has determined that the observer sampling station requirements are necessary to adequately account for quota catch under this Program and are necessary and justified.

Comment 103: The proposed rule appears to limit a vessel to a single operational line and scale. Until publication of the proposed rule, we had the understanding that vessel owners could install two operational lines with flow scales so as not to impede the flow of fish out of the fish bin or through the factory. The rule limiting a vessel to one operational line results in a significant reduction in productivity and financial impact that was never analyzed during the Council process.

Response: NMFS has addressed operational aspects of this comment in the response to Comment 94. As noted there, NMFS does not anticipate that the number of flow scales will limit production capacity.

The EA/RIR/IRFA prepared for this action described the costs associated with the required monitoring provisions. These costs included the costs associated with flow scales and sampling station installations for one scale. While the EA/RIR/IRFA did not describe the costs associated with two observers available to sample at all times (necessitating a total of four observers per vessel), two flow scales, and two sample stations, these costs could be doubled to provide an estimate of total costs.

Comment 104: The effect of the regulation at § 679.84(c)(5) will be to significantly slow down fishing operations, because the vessel will no longer be able to use the deck area to hold fish while it resets the net. This standard industry operating practice of holding fish on deck has been allowed for the past 15 years and if prohibited will again increase the unit cost of production.

Response: A vessel operator may still use deck area for storage but all fish must be contained inside the codend. If vessel operators leave fish on deck outside a codend, incentives exist to sort fish without an observer present. Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of Pacific halibut highlight this practice of biasing observer samples to optimize groundfish catch by minimizing the potential constraints of properly observed halibut PSC or other groundfish catch. Fish on deck that are stored inside a codend are less likely to provide presorting opportunities.

Vessels have the ability to join cooperatives under this Program and receive a direct allocation of a quota species, thereby removing the race for fish. Vessels will have the option to slow fishing and therefore reduce the need to store fish on deck outside the codend. The rule has not been modified.

Comment 105: In § 679.84(c)(8), turning control of the belt operations over to the observer is questionable. This not only has the effect of slowing down the production, but now puts the observer in direct control of factory operations. Does the observer assume any liability for the consequences of the stopping of the belt operation if it causes an injury?

Response: Regulations at § 679.84(c)(8) do not require observers to have physical control of belt operations. Rather, regulations require vessel operators to ensure crew members provide reasonable assistance to observers during the course of their sampling activities. For observers to collect random and discreet samples, they will need to request the crew to stop and start belts in the factory. Additionally, this will allow observers to help ensure no one is in the bin while they collect their sample. An observers' ability to request that belts be cleared or slowed down will not change current requirements. Furthermore, observers are advised during training not to perform duties of the crew aboard the vessels. Because observers will not have direct, physical control of the belts and will not be making the decision to stop or start a belt if a safety situation exists, the observer will not assume the liability. The rule has not been modified.

Comment 106: As an active participant in the development of the two year demonstration Program, our company never envisioned the far reaching, invasive, and costly regulation requirements being proposed in these regulations. Industry envisioned the two year experimental Program to be a program that would allow companies to catch and process fish without imposing significant costly catch or processing restrictions. Abandon these regulations and conduct a series of meetings with the industry involved to develop more reasonable and workable monitoring and enforcement provisions. The presumptions made by the agency of the accuracy and level of monitoring required to implement this Program are not in line with industry expectations. The proposed rule far exceeds what a reasonable person would look for to ensure the integrity of the Program. The participants within the Program should judge what accuracy is required for the accounting of catch within the cooperative.

Response: NMFS disagrees. Although the costs and extent of the monitoring and enforcement provisions required by this rule may be greater than desired by the commenter, NMFS and the Council provided extensive public opportunity for discussion and analysis of these provisions throughout the development of the Program. Additionally, in response to public comments on the proposed rule, NMFS has modified the final rule to reduce the burden of the monitoring and enforcement standards on the fleet while maintaining NMFS' ability to meet the monitoring and enforcement objectives of the Program (see the responses to Comments 50 and 90).

In developing the Program, NMFS and the Council analyzed and discussed the management, monitoring, and enforcement of the Program. NMFS and the Council clearly articulated the need for high quality monitoring and enforcement for this quota-based Program in the EA/RIR/IRFA prepared for the proposed rule and the final EA/RIR. The need for and nature of these monitoring and enforcement provisions are contained throughout these documents, and were addressed at Council meetings in 2004 and 2005 during which the Program was developed (see the Council website for additional information: *http://www.fakr.noaa.gov/npfmc*).

A series of public meetings were held with industry to develop workable monitoring and enforcement provisions. In addition to work done in conjunction with the Council process, NMFS held two public meetings on June 27, 2005, and December 16, 2005, (see 70 FR 72791 and 70 FR 36555), to gather industry input for the development of the monitoring and enforcement requirements for the Program. The two public meetings were held in Seattle, Washington, and addressed monitoring and enforcement requirements that would apply to the fishery participants, including the catcher/processor sector, under Amendment 80 and the Program. These meetings were well attended by numerous representatives from the affected public. Comments received at these meetings were considered and incorporated into the monitoring and enforcement provisions contained in this rule. After the publication of the proposed rule on June 7, 2006, NMFS held two public meetings to further explain the nature of the Program, and monitoring and enforcement requirements (see 71 FR 35859).

Comment 107: Reconsider approval and implementation of this rule or delay implementing the regulations until at least 2008, when we will know if Amendment 80 is approved and implemented. These regulations will result in exorbitant costs and duplicate regulations that have been promulgated under Amendment 79 and will again be promulgated under Amendment 80 of the FMP.

Response: NMFS does not intend to delay the effective date of the Program. As the Commenter indicates, regulations already published under Amendment 79 to the BSAI groundfish FMP (April 6, 2006, 71 FR 17362) contain the same monitoring requirements as those implementing the Program, with limited modifications (e.g., bin monitoring requirements under § 679.84(c)(9)). Additionally, the draft EA/RIR/IRFA reviewed by the Council during the development of Amendment 80 analyzes many of the requirements of Amendment 79 and this Program. These monitoring provisions are necessary for monitoring, enforcement, and biological and management data collections. Where practicable, NMFS has intentionally promulgated or intends to promulgate regulations that are similar or the same among multiple management programs. NMFS' intent in creating similar monitoring provisions is to allow vessels that participate in multiple management programs to comply with each program's monitoring and enforcement provisions simultaneously and as efficiently as possible. Participants may meet many of the monitoring requirements of Amendment 79 and Amendment 80, if approved and implemented, by making the catcher/processor factory modifications required for this Program, and effectively offset the costs associated with vessel modifications and down time (see response to Comment 93).

Under the Program, options exist for the vessels that do not wish to make these modifications in the first year of the Program. A vessel operator could choose to opt–out of the fishery and have the reduced monitoring requirements and observer coverage apply; join a cooperative and arrange to have other vessels that meet the monitoring requirements fish the CQ for the cooperative; or create a cooperative and lease the resulting CQ to another cooperative. All of these options forego the need to modify the vessel, provided that vessel is not used to fish in the GOA during July. The rule has not been modified.

Comment 108: If vessels are fishing under a rockfish cooperative CQ permit in May or June, they can target rockfish using the CQ permit, or vessels assigned to a rockfish cooperative could target flatfish fisheries when not fishing under the CQ permit. Prior to July, vessels would not be subject to sideboard limits. If the vessels are fishing in July, they can target on rockfish a using their CQ permit, or target other fisheries, but would be subject to July sideboard limits.

Response: NMFS agrees. Vessels that are participating in a rockfish cooperative can begin fishing under a CQ permit on May 1. Harvests made by vessels in a rockfish cooperative that are not fishing under a CQ permit will be subject to current regulations regarding target species, halibut PSC accounting, and MRAs in May and June. From July 1 through July 31, vessels in a rockfish cooperative may fish under the CQ permit, and fish harvested under that CQ permit will not be debited from the sideboard limit that is applicable to that vessel. However, if that vessel is not fishing under a CQ permit, catch by that vessel will be debited from the sideboard limit that is applicable to that vessel. After July 31, sideboard limits are not applicable to that vessel.

Comment 109: As participants in the CGOA rockfish fishery, we do not want to see our allocation eroded by our own participation in second season GOA fisheries or our sideboard fisheries prosecuted prior to prosecution of our allocation.

Response: Sideboard limits are applicable only during July. If an eligible rockfish harvester chooses to operate in non-Program fisheries prior to July, existing regulations would apply.

Comment 110: According to the draft EA/RIR/IRFA, the 1999 rockfish opening date was July 4. Table 28 in part 679 indicates that the opening date for all three primary rockfish fisheries was July 1. The correct opening date is July 4. The regulations should be changed.

Response: NMFS agrees and has corrected Table 28 to part 679. Table 1 of the final EA/RIR prepared for this action as well as records maintained by NMFS note that the opening date for all three primary rockfish fisheries in 1999 was July 4, not July 1.

Comment 111: According to the EA/RIR/IRFA, Pacific cod will be managed as a hard cap for the catcher vessel sector and managed for the catcher/processor sector using an MRA. The following text in the preamble to the proposed rule is inconsistent with these management measures:''The Council recommended managing Pacific cod in the catcher vessel sector using an MRA that would reflect historic harvest rates but provide more flexibility for the fleet than a fixed hard cap'' allocation of CQ might provide.''

Response: NMFS agrees that the preamble text is inconsistent with the regulatory text in § 679.20(e) and in Table 30 to part 679. The regulatory text is correct and the error in the preamble is typographic.

Comment 112: Table 30 to part 679 lists the wrong MRA percentage for Skates and Other Species at 2.0 percent. These values should be 20 percent, which is consistent with what is presently in the regulations in Table 10 to part 679. The Council recommended changing the MRA percentage for only certain species. The Council did not recommend changing the MRA percentages for Skates and Other Species.

Response: NMFS agrees and has changed the MRA for ''Skates'' and ''Other Species'' to 20.0 percent. The text in Table 30 to part 679 of the proposed rule listing an MRA of 2.0 percent was a typographic error. This change is consistent with the MRAs established for other non-allocated secondary species.

Comment 113: The Council motion allocates a percentage of the overall halibut mortality cap to Program participants, either as cooperative allocations or as allocations to the limited access fishery. During the development of the sideboard provisions, industry participants have always assumed that the halibut mortality from the third season allocation was being modified by Council action for the Program. This means that the halibut apportionment for trawl gear for the third season (July 1) should be the only halibut apportionment that should be modified for the year, rather than modifying the annual GOA deep complex halibut mortality limit of 2000 mt.

Currently, the third season trawl halibut mortality apportionment is 400 mt for deep-water complex species, and 200 mt for shallow-water complex species. Allocation to the Program for halibut PSC CQ should be taken off this 400 mt apportionment instead of off of the entire 2000 mt limit. This will make the third season halibut sideboard cap functional for the industry where the catcher vessel Program participants are sideboarded at 101 mt in the deep-water complex, and at 137 mt in the shallow-water complex. If the halibut apportionments are not taken from the third season, then the July sideboard caps would not be indexed correctly. It is inappropriate to take the Program's halibut PSC allotment from the total yearly halibut cap, because there are many other fisheries that depend on that halibut PSC allotment. Additionally, the shallow complex apportionment for the third season should remain unchanged at 200 mt for the sideboard cap to have any meaning.

Response: NMFS agrees that the use of halibut mortality in the Program should be debited from the trawl apportionments of halibut PSC currently made for fishing in the third season (July 1 through September 30). The mechanism that the Commenter describes for accounting for halibut PSC use in the Program is consistent with NMFS' intent to manage halibut PSC without modifying apportionment of halibut PSC available to the non-Program participants in other seasonal apportionments. No modification to the rule has been made.

Comment 114: Paragraph (h)(1) of § 679.81 states that rockfish cooperatives may harvest non-allocated species up to the MRA limits established in Table 30 to part 679. The regulation should specify that other non-allocated species may be harvested up to the MRA in Table 10 of GOA specifications. The same clarification should be made in § 679.81(h)(2) and (3).

Response: Table 30 to part 679 does note the MRA percentages that are applicable to non-allocated species and describes the amount that vessels participating in fishing under a CQ permit may harvest. Vessels not fishing under a CQ permit, but assigned to a rockfish cooperative, are subject to the MRA percentages established in Table 10 to part 679. Table 30 to part 679 has been modified to clarify this intent.

Comment 115: Table 30 to part 679 should be modified because the MRA for thornyhead rockfish for the limited access fishery seems to be missing.

Response: NMFS agrees. NMFS has modified Table 30 to part 679 to include a row for the MRA for thornyhead rockfish that would be 4.0 percent of the basis species for vessels fishing in the limited access fishery. This amount is consistent with the MRA percentages established for other rockfish species (e.g., northern rockfish) that may be incidentally harvested in the limited access fishery, except shortraker and rougheye rockfish for which the Council recommended a lower MRA percentage. This MRA percentage is also consistent with the intent to lower MRA percentages for secondary species. As noted on page 22048 of the preamble to the proposed rule (71 FR 33040), ''the secondary species MRA in the limited access fishery would be reduced from current MRA levels. This approach would reduce the incentive for eligible harvesters to participate in a limited access fishery and ''top off,'' or selectively target high value, secondary species.''

Comment 116: Modify § 679.84(f)(3) and Table 10 to part 679 to clarify that rockfish cooperative MRAs apply to vessels fishing CQ only, and that the MRAs for northern rockfish, pelagic shelf rockfish, and Pacific ocean perch in the limited access fishery apply when directed fishing for those species is closed. Add an MRA amount for thornyhead rockfish in the limited access fishery for catcher vessels and catcher/processors.

Response: NMFS agrees. However, the comments are applicable to Table 30 to part 679, not to § 679.84(f)(3). Specifically, NMFS has modified Table 30 to note that the MRAs that are applicable to ''Rockfish Cooperatives'' apply only to vessels that are assigned to fish the CQ for a rockfish cooperative, but are not applicable to vessels that are assigned to a rockfish cooperative but fishing in other fisheries. Those vessels would continue to be subject to MRA restrictions applicable to the specific non-Program fishery in which they are engaged under Table 10. This provides additional clarification lacking in the original text of the table.

MRA percentages are applicable only when a directed fishery for a species is closed and that species is an incidental catch species as described under § 679.20(e)(1). No change is necessary to indicate when the MRA percentages apply to northern rockfish, pelagic shelf rockfish, and Pacific ocean perch in the limited access fishery.

An MRA percentage for thornyhead rockfish has been applied under the response to Comment 115.

Comment 117: Ban all trawling completely. It decimates the bottom for forty years before regrowth can take place. It is extremely anti-environmental. Cut all quotas by 50 percent this year. It is clear that the marine life in this area is starving when so many metric tons are taken by these greedy commercial fish industry profiteers, who are willing to decimate every single species. It is time to put a hold on the enormity of this depredation by these profiteers.

Response: This action is not intended to ban specific gear types. Amendment 68 is intended to provide an opportunity to implement the Program as directed by Congress and developed in coordination with the Council. The Final EA/RIR developed for Amendment 68 did review the impacts of this action and concluded that it would not result in a significant impact on the human environment. Each year, NMFS and the Council review the status of stocks through a public scientific

review process to ensure conservation of the resource before allocating TAC or quota. Banning trawling or reducing harvests are not the goals of this action and would need to be addressed in a separate regulatory action developed through the Council process.

Comment 118: NMFS' apparent purpose for sweeping all vessels with any legal rockfish harvests during the statutory qualification period into the Program is to avoid a situation in which owners of multiple vessels consolidate the history of one of more vessels under a cooperative, and use the other or others to increase capacity in non-rockfish fisheries. This is not a concern with vessels that have not participated in the rockfish fisheries at more than a minor level because they have nothing of value to transfer. Develop a reasonable threshold that excludes such vessels from the Program to remove the complexities attendant to the opt–out fishery.

Response: The Council and NMFS jointly developed the Program. The Council chose to use criteria that included vessels with limited historical harvests. This choice was made in consideration of the guidance provided in Section 802, the Magnuson-Stevens Act, and through the Council's public process. NMFS does not disagree that alternative sideboard provisions could have been developed for the vessels that choose to participate in the opt–out fishery. However, the decision to require those vessels to comply with sideboard limits was deliberated through the Council's public process, and the regulations developed by NMFS are consistent with the Council's motion recommending this action and Amendment 68. The rule has not been modified.

Comment 119: The Program stands on an unusual footing given that Congress directed the ''Secretary'' to establish the Program. Once the agency turned responsibility for the Program development over to the Council, it is not clear that NMFS can, without explanation, ignore the Council's recommendations with respect to the opt–out fishery. In so doing, NMFS has arbitrarily and capriciously failed ''to consider an important aspect of the problem'' that the Council has identified and resolved.

Response: NMFS has not ignored the recommendations of the Council with respect to the opt–out portion of the Program nor has it acted in an arbitrary and capricious manner. Section 9.2 of the Council motion recommending this action clearly states that a vessel that chooses to participate in the opt–out fishery is subject to sideboard limits during July. NMFS merely placed into regulations the Council's intent. See also the response to Comment 90.

Comment 120: The Magnuson-Stevens Act imposes a substantive standard on NMFS and requires it to assess the benefits and burdens of its management measures and monitoring programs, in particular under National Standards 7 and 8. These regulations violate National Standard 7 of the Magnuson-Stevens Act. Failure to overlook such an important issue also raises questions of reasoned decision-making.

Response: National Standard 7 states that, ''conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.'' National Standard 8 states that ''conservation and management measures shall, consistent with the conservation requirements of this Act (including prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.''

NMFS has determined that this final rule meets the Magnuson-Stevens Act national standards. NMFS reviewed the requirements of all national standards, including National Standards 7 and 8, and explicitly address how the Program meets those standards in Section 4.1 of the final EA/RIR prepared for this action. Additionally, the final EA/RIR addresses issues related to the national standards. The final EA/RIR addresses the monitoring and enforcement costs of the Program and potential effects of the allocations on fishery dependent communities. Monitoring and enforcement needs and costs are also addressed in the classification section of the preamble to the proposed rule and this final rule.

Additional Changes from the 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.

In § 679.2, NMFS modified the definition of ''Rockfish Program fishery'' to specifically describe the fisheries that are managed under the Program, specifically, rockfish cooperatives, rockfish limited access fisheries, opt–out fishery, and the entry level fisheries. The terms ''Rockfish fishery'' and ''Rockfish Program Fishery'' are used in several places in the regulatory text, and NMFS has replaced the term ''Rockfish Fishery'' throughout the regulatory text with the term ''Rockfish Program fishery'' to ensure greater consistency and clarity.

In § 679.7, NMFS made several modifications to prevent vessel operators from circumventing monitoring and enforcement provisions established for rockfish cooperatives, rockfish limited access fisheries, and the opt–out fishery by using an LLP license that is not assigned Rockfish QS. By removing the NMFS approval process for adding and removing specific vessels eligible to fish for a rockfish cooperative through a CQ permit modification in response to Comment 50, NMFS changed the method used to ensure that the activities of specific vessels is monitored adequately and catch are properly deducted. These changes are consistent with the intent of the monitoring and enforcement provisions in the proposed rule to adequately monitor all catch by vessels under the Program.

First, NMFS modified the prohibitions in § 679.7(n)(1)(i) through (iii), (n)(2)(i), (n)(2)(ii), (n)(3)(i), (n)(3)(ii), and (n)(3)(iv) to apply vessel monitoring and enforcement standards to vessels that are assigned to a rockfish cooperative, limited access fishery or opt–out fishery, even if those vessels are not named on an LLP license with Rockfish QS. This ensures that all vessels in the Program are properly monitored regardless of the specific LLP license used by that vessel.

Second, NMFS inserted a new prohibition in § 679.7(n)(1)(v) that prohibits a vessel from being used in more than one Program fishery in a calendar year. This change mirrors existing requirements in § 679.7(n)(1)(iv) that apply to LLP licenses. This change is necessary to ensure that all vessels fishing in the Program are properly assigned to only one Program fishery. Otherwise, vessels could be assigned to more than one cooperative, or to the limited access fishery and a cooperative, limiting the ability for NMFS to adequately monitor and track harvests and creating the potential for a small number of vessels to be assigned to multiple cooperatives.

Third, NMFS added text in § 679.81(i)(3)(ix) to clarify that a vessel may only be assigned to fish for one rockfish cooperative in a calendar year.

In § 679.28(b)(2)(v) and (d)(8)(ii), NMFS added provisions to allow observer sampling station and scale inspections in Kodiak, Alaska, in addition to Dutch Harbor, Alaska, and in the Puget Sound area of Washington State. NMFS made this change to accommodate the catcher/processor fleet that will be active in the waters of

the Central GOA near Kodiak. This change is also consistent with the locations where bin monitoring inspections can occur for catcher/processor vessels assigned to the opt–out fishery.

In § 679.80(f)(6), NMFS revised the regulatory text concerning the use of VMS to incorporate changes made to the VMS regulations that were made to this section after the proposed rule for the Program on June 6, 2006 (71 FR 33040). On June 22, 2006 (71 FR 36694), NMFS published a final rule to modify VMS requirements to incorporate necessary changes. NMFS is incorporating those changes in this rule.

In addition, NMFS is correcting a typographic error in the regulations that were published in the EFH final rule (71 FR 36694, June 28, 2006). The EFH final rule incorrectly revised § 679.28(f)(6)(i) to limit the VMS operation to when the vessel is ''in'' a fishery requiring VMS. That error unintentionally changed the provisions for VMS operation from the original intent. The VMS requirement for the pollock, Pacific cod, and Atka mackerel fisheries required the use of VMS whenever the endorsed fishery is open, regardless of whether the vessel is currently participating in the open fishery. This rule would remove the word ''in'' preceding ''any fishery'' to ensure this provision is interpreted consistent with its original intent.

In § 679.80(e)(3), NMFS changed the deadline for submitting the application to participate in the Program from December 1, 2006, until January 2, 2007. This change will provide potential participants additional time to prepare their applications after the effective date of this rule.

In § 679.80(e)(4) and § 679.81(e)(3), NMFS added a requirement that the applicant provide Tax Identification Numbers (TINs), either Social Security Numbers for individuals or Employer Identification Numbers for corporations, on fishery permit applications. NOAA has the authority to require applicants for federal fishery permits to provide TINs pursuant to the Debt Collection Act. In addition NMFS will collect information on the date of birth of an individual or the date of incorporation of a corporation. These changes affect the application to participate in the Program, and the annual applications for CQ, the rockfish limited access fishery, and the opt–out fishery.

In § 679.82(f)(2)(iii), (g)(2)(iii), and (h)(2)(iii) NMFS clarified regulatory language stating that catcher/processor vessels that are designated for a rockfish cooperative, rockfish limited access fishery, or opt–out fishery in the annual application to participate in those rockfish fisheries are subject to the sideboard limits that apply to those fisheries. The regulatory text was unclear and has been corrected to better reflect Council intent and reduce confusion for the reader.

In § 679.84(c)(5), NMFS added a sentence which clarifies that fish accidentally spilled from the codend must be moved to the fish bin. This clarification ensures that an observer is provided an opportunity to sample all catch that is aboard a vessel.

In § 679.84(c)(9) and (c)(9)(v), NMFS added text to clarify that catcher/processor vessels assigned to the opt–out fishery must arrange for inspection of their bin monitoring option. Each option must be inspected and approved by NMFS annually and prior to its use for the first time. NMFS had intended to approve bin monitoring options during the annual observer sampling station inspection. Because NMFS removed the requirement for an observer sampling station on these vessels, NMFS must certify bin monitoring options through an alternative approval process. These changes do not increase the requirements that applies to these vessels, but merely clarifies the approval process.

In Table 29 to part 679, NMFS changed the date that is used to establish the amount of the initial Rockfish QS pool assigned to the catcher/processor and catcher vessel from December 31, 2006, to January 31, 2007. This change accommodates the change in the date of the application to participate in the Program and provides NMFS with time to review any claims for Rockfish QS prior to fixing the initial Rockfish QS pool used to calculate use caps.

NMFS also made several editorial corrections to the regulatory text for improved readability and accuracy. These changes clarify or correct errors in the phrasing of particular provisions. Changes from the proposed to final rule that may have a substantive effect are indicated in the following table:

Correction	Section modified
Changed the term ''poundage'' to ''tonnage'' throughout the regulatory text referring to TAC issuance of halibut PSC use because NMFS issues TAC and halibut PSC in metric tons, not pounds.	Throughout the regulatory text
Replaced the term referring to the fisheries opened by the State of Alaska ''for which it adopts a Federal fishing season'' with the term ''for which it adopts the applicable Federal fishing season for that species'' to provide clarity when referring to multiple groundfish fisheries opened in State waters.	Throughout the regulatory text
Replaced the term ''until'' with ''through'' when referring to actions that are effective up to and including a specific date and time.	Throughout the regulatory text
Replaced the term ''authorized representative'' with ''designated representative'' when referring to the individual acting on behalf of a rockfish cooperative to avoid confusion with individuals who may be authorized representatives of the corporation.	Throughout the regulatory text
Modified the definition of an rockfish entry level harvesters to be consistent with § 679.80(b)(2)	§ 679.2, Under the definition of *Rockfish entry level harvester*
Modified the definition of an eligible rockfish entry level processor to be consistent with § 679.80(c)(3)	§ 679.2, Under the definition of *Rockfish entry level processor*
Added the term ''trawl and non trawl fisheries'' to the definition of ''Rockfish entry level fishery'' to clarify that there are two gear types that may be used in the entry level rockfish fishery.	§ 679.2, Under the definition of *Rockfish entry level fishery*

Correction	Section modified
Added the terms ''BSAI'' and ''catcher vessel'' to clarify that Pacific cod sideboard limits apply only to catcher vessels in the BSAI.	§ 679.2, Under the definition of *Sideboard limit for purposes of the Rockfish Program*
Deleted the term ''eligible'' in the definitions of a ''rockfish entry level harvester,'' and ''Rockfish entry level processor.'' The term ''eligible'' is redundant.	§ 679.2, Under the definition of *Rockfish entry level harvester* and *Rockfish entry level processor* and throughout the regulatory text
Changed the term ''entry level fixed gear'' to ''entry level longline gear.'' The term longline is defined in § 679.2, but the term fixed gear is not. Longline gear includes hook and line gear, jig gear, and troll gear. These gear types are commonly referred to as fixed gear.	§ 679.2, Under the definition of *Rockfish entry level harvester* and throughout the regulatory text
Corrected the citation of provisions related to FFP issuance in § 679.4(b)(10) to § 679.4(b)(6)(iii).	§ 679.4(b)(10)
Reordered the table in § 679.4(a)(1)(xii) so that the citations are referenced in the order in which they occur in the regulations.	§ 679.4(a)(1)(xii)
Replaced the word ''revoked'' with ''voided.'' The term revoked has a specific meaning that refers to an enforcement action and is not applicable in this provision.	§ 679.4(n)(1)(ii)(D)
Added mailing as an option for submitting a termination of fishing declaration	§ 679.4(n)(2)(iii)(C)
Corrected the citation in this section from (f) to (g).	§ 679.4(n)(3)(ii)(A)
Replaced the term ''permitted'' with the term ''authorized'' in the regulatory text when referring to actions that NMFS authorizes (e.g., entry level rockfish fishery) but for which NMFS does not issue a specific permit.	Primarily in § 679.5 and in other sections throughout the regulatory text
Added the requirement to include a NMFS person ID in the Rockfish cooperative termination of fishing declaration.	§ 679.5(n)(2)(iii)(C)
Clarified that a rockfish cooperative termination of fishing declaration is effective from the date of approval to the end of the calendar year.	§ 679.5(n)(2)(v)
Corrected the citation to apply to § 679.81(g)	§ 679.5(n)(3)(ii)(A)
Clarified that the prohibition on retaining primary rockfish species when fishing under a CQ permit applies only to primary rockfish species harvested in the Central GOA	§ 679.7(n)(1)(i)
Inserted a prohibition which clarifies that it is prohibited to harvest primary rockfish species, secondary species, or use halibut PSC assigned to a rockfish cooperative without a valid CQ permit.	§ 679.7(n)(1)(viii)
Corrected the citation to apply to § 679.82(d) through (h).	§ 679.7(n)(2)(iii)
Changed the use of the work ''that'' to ''any'' to clarify that the prohibition applies to exceeding the CQ limit for all primary rockfish species	§ 679.7(n)(7)(i) and (ii)
Clarified language to indicate that halibut PSC may be reapportioned to the trawl fishery after the effective date of a rockfish cooperative termination of fishing declaration. NMFS has replaced references to the approval of the rockfish cooperative termination of fishing declaration to refer to the effective date of the declaration for additional clarity in other sections. The declaration is effective upon approval.	§ 679.21(d)(5)(iii)(B)(*2*) and throughout the regulatory text
Clarified that observer coverage is effective through the earlier of November 15 or the effective date and time of an approved rockfish cooperative termination of fishing declaration.	§ 679.50(c)(7)(i)(A)
Clarified that observer coverage is effective through the earlier of November 15 or the date and time NMFS closes all directed fishing for all primary rockfish species.	§ 679.50(c)(7)(i)(B)
Clarified that the allocation of Rockfish QS as ''the'' percentage of legal rockfish landings by an eligible rockfish harvester ''in that sector'' for which they are applying.	§ 679.80(f)(3)(ii)
Corrected text describing the allocation of secondary species CQ to a rockfish cooperative in the catcher/processor sector to match the text used in the algorithm.	§ 679.81(b)(5)(i)
Removed the reference to Central GOA and replace it with ''GOA'' to ensure that all halibut PSC used in the GOA is the denominator for determining the maximum amount of halibut PSC that may be allocated to the catcher/processor sector	§ 679.81(c)(2)(ii)
Corrected text describing the allocation of halibut PSC CQ to a rockfish cooperative in the catcher/processor sector to match the text used in the algorithm.	§ 679.81(c)(4)(i)

Correction	Section modified
Corrected the date from ''on June 6, 2006'' to ''prior to June 6, 2005'' consistent with Council intent and with the date of final Council action on Amendment 68 as established in other portions of the regulations.	§ 679.82(a)(3)
Rephrased the wording to remove redundant text establishing the criteria for establishing the use cap applicable to vessels in the catcher/processor sector	§ 679.82(a)(4)
Clarified that a use cap exemption applies only if that rockfish QS is assigned to LLP license(s) held by that eligible rockfish harvester at the time of application to participate in the Rockfish Program and prior to June 6, 2005.	§ 679.82(a)(6)(i)
Clarified the regulatory language applying a use cap to an eligible rockfish harvester who received an initial allocation of rockfish QS in excess of the use cap if that person transfers rockfish QS to another person, but the amount of rockfish QS remaining after the transfer is above the use cap.	§ 679.82(a)(6)(ii)(B)
Deleted the reference which indicated that halibut PSC used in the rockfish limited access fishery would be deducted from the seasonal apportionment ''for that sector.'' Seasonal apportionments of halibut are not made by sector	§ 679.82(b)(5)
Changed the term ''halibut mortality sideboard limit'' to ''halibut PSC sideboard limit'' to ensure consistency with regulations.	§ 679.82(d)(5)(ii)
Clarified that a catcher/processor sideboard limit is calculated based on the catch history of the LLP licenses assigned to that rockfish cooperative. This replaces the term ''vessel'' that is vague and could have applied to vessels that are hired to fish for the cooperative but are not otherwise eligible for the Program.	§ 679.82(d)(6)(iii) and § 679.82(d)(8)(iii)(A) and (B)
Edited text to clarify the amount of the sideboard limit that will apply to catcher/processor participants that are not in a rockfish cooperative as an aggregate of the sideboard limit remaining after allocation to catcher/processor cooperatives.	§ 679.82(d)(8)(iii)(C)
Edited text to clarify the how NMFS will close specific flatfish fisheries to directed fishing when a halibut PSC sideboard limit is reached.	§ 679.82(d)(9)(i) and (d)(9)(ii)(B)
Rephrased the description of halibut PSC sideboard management for improved clarity.	§ 679.82(d)(9)(iii)
Clarified that any catcher/processor LLP license that has been used to qualify for purposes of a rockfish cooperative allocation or a vessel that has been assigned to a rockfish cooperative remains subject to sideboard limits applicable to that rockfish cooperative for that calendar year.	§ 679.82(f)(1) and (2)
Clarified that vessels fishing in a rockfish limited access or under a CQ permit are not subject to prohibitions on directed groundfish fishing for species harvested during a rockfish limited access fishery or under a CQ permit during July.	§ 679.82(f)(4) and (g)(3)(i)
Corrected citation to§ 679.82(d) through (g)	§ 679.84(c)
Added text to clarify that the observer must be present at the pre–cruise meeting. Otherwise, a vessel owner or operator could schedule a pre–cruise meeting prior to the observer even showing up at the boat. While it is helpful to have NMFS staff meet with vessel personnel, the goal of the pre-cruise meeting is to establish a working relationship between the vessel personnel and the observer.	§ 679.84(c)(7)
Corrected this provision to require that the owner or operator of a catcher vessel ensures the vessel operator complies with the observer coverage requirements. Previous wording had required the owner and operator to be responsible. Only one party is required. This change is consistent with the requirements for catcher/processor vessels.	§ 679.84(e)

Other editorial changes were made throughout the rule that NMFS determined had no substantive effect.

Classification

This final rule has been determined not to be significant for the purposes of Executive Order 12866.

NMFS has determined that Amendment 68 and the provisions in this rule that implement Amendment 68 are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS made the determination that this rule is consistent after taking into account the data, views, and comments received during the comment period.

A draft EA/RIR/IRFA was prepared for Amendment 68 and the proposed rule. A final EA/RIR was prepared for this rule. The EA analyzes the impacts of the proposed action and its alternatives on the human environment. The RIR assesses all costs and benefits of available regulatory alternatives. Copies of the final EA/RIR for this action are available from NMFS (see **ADDRESSES**). A final regulatory flexibility analysis (FRFA) has been prepared for this rule. Copies of the FRFA are available from NMFS (see **ADDRESSES**).

The RIR presents an analysis of the extensive and elaborate series of alternatives, options, and suboptions the Council developed as it designed and evaluated the potential for rationalization of the Central GOA rockfish fisheries. The RIR considers all quantitative and qualitative measures. The Program was chosen based on those measures that maximize net benefits to affected participants in the Central GOA rockfish fisheries.

The EA presents an analysis of the three alternative programs for management of the Central GOA rockfish fisheries for catcher vessels: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3). Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council's preferred alternative(the rockfish cooperative alternative.

Final Regulatory Flexibility Analysis

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 Program for groundfish fisheries in the GOA 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 June 7, 2006 (71 FR 33040). An IRFA was prepared for the proposed rule, and described in the classification section of the preamble to the rule. The public comment period ended on July 24, 2006. NMFS received nine letters of public comment on the proposed rule. NMFS summarized these letters into 120 separate comments. Of these, one comment was directly on the IRFA and is presented below. No changes were made to the final rule from the proposed rule in response to the comment 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: The EA/RIR/IRFA prepared for the Program contains no analysis of the economic impacts of applying the monitoring and enforcement requirements to the catcher/processor vessels in the opt–out fleet. The RFA requires the agency to determine the impacts of a proposed rule on small entities. It then requires the agency to identify and develop alternatives to ameliorate the economic and compliance impacts on small entities if the proposed rule has a significant impact on a substantial number of small entities.

Response: As discussed in the IRFA, the RFA requirements do not apply to catcher/processor vessels participating under this Program. As noted in Section 5.4 of the IRFA, no processors or catcher processors eligible for the Program and regulated by this action are small entities, as defined by the RFA.

Nevertheless, throughout the final EA/RIR and the draft EA/RIR/IRFA, NMFS provides information on the anticipated costs to directly regulated entities of meeting monitoring and enforcement standards that are applicable under this Program. Section 5.5 of the IRFA notes that ''catcher/processors are also likely to be required to add flow scales and observer stations on their vessels. These observer requirements and their costs are fully described in Sections 2.5.1 and 2.5.9.'' Section 2.5.1 of the EA/RIR notes that ''monitoring will need to be modified so that these allocations are monitored at the individual or cooperative level. In addition, observer requirements will also need to be modified to suit the new system of allocations.'' Section 3.4.1 of the EA/RIR includes a review of the potential costs and updated information on the specific monitoring and enforcement requirements applicable to catcher/processor vessels in the opt–out fishery.

Section 2.5.1 of the final EA/RIR also notes in the discussion of the preferred alternative selected by the Council (i.e., ''Catcher/processor allocation with cooperatives'') that:

> In addition to managing aspects of the rockfish target fishery, NOAA Fisheries would need to approve and monitor and manage sideboards. Any participant who intends to, or does, participate in any of the fisheries governed by the sideboards during the July sideboard period must have adequate observer coverage onboard the vessel so that all catch taken under sideboards will be assessed against the overall sector harvest limit. Observer coverage would be the same as that required during a cooperative fishery to adequately manage rockfish harvests.

This statement strongly states that, under the Program, NMFS would thoroughly monitor and manage the sideboard limits applicable to this sector.

The final rule has not been modified to address this comment, however, NMFS refers the commenter to the response to comment 90, which addresses modifications made to the monitoring and enforcement provisions applicable to catcher/processor vessels under this rule.

Need for and objectives of this action. The FRFA describes in detail the reasons why this action is being implemented, describes the objectives and legal basis for the final rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. Section 802 of the Consolidated Appropriations Act of 2004 and the Magnuson-Stevens Act provide the legal basis for the rule, namely to achieve the objective of reducing excessive fishing capacity and ending the race for fish under the current management strategy for commercial fishing vessels operating in the Central GOA rockfish fisheries. By ending the race for fish, NMFS expects this action to increase resource conservation, improve economic efficiency, and address social concerns.

Number of small entities to which the proposed rule will apply. The FRFA contains a description and estimate of the number of small entities affected by the rule. The FRFA estimates that as many as 63 entities, that own approximately 48 catcher vessels and 15 catcher/processor vessels, are eligible to receive Rockfish QS under the Program. The FRFA estimates that approximately 171 trawl vessels and 900 non-trawl vessels could participate in the entry level fishery. The number of vessels that will choose to participate in the entry level fishery component of the Program is not known; therefore, there is no estimate of the number of entities in the entry level fishery that are directly regulated under this Program.

In addition, six entities that process rockfish are estimated to be eligible rockfish processors and are regulated under this Program. None of these eligible rockfish processors are estimated to be small entities based on the number of persons employed by these processors. Additionally, some of these eligible rockfish processors are estimated to be involved in both the harvesting and processing of seafood products and exceed the $4.0 million in revenues as a fish harvesting operation. Some processors that are not eligible rockfish processors may choose to compete for landings from the entry level fishery and are regulated by this Program. Some of these processors may be small entities. The extent of participation by small entities in the

processing segment of the entry level fishery cannot be predicted.

Of the estimated 63 entities owning vessels eligible for fishing under the Program (other than the entry level fishery), 45 are estimated to be small entities because they generated $4.0 million or less in gross revenue based on participation in 1996 through 2002. All 15 of the entities owning eligible catcher/processor vessels are non-small entities as defined by the RFA. No catcher vessel individually exceeds the small entity threshold of $4.0 million in gross revenues. At least three catcher vessels are believed to be owned by entities whose operations exceed the small entity threshold, leaving as many as 45 small catcher vessel entities that are directly regulated by this action. The ability to estimate the number of small entities that operate catcher vessels regulated by this action is limited due to incomplete information concerning vessel ownership.

It is likely that a substantial portion of the catcher vessel participants in the entry level fishery will be small entities. Approximately 171 LLP licenses are qualified to fish in the Central GOA entry level trawl fishery and 900 LLP licenses are qualified to fish in the entry level longline gear fishery. However, it is not possible to determine how many persons may hold these LLP licenses and chose to participate in the entry level fishery prior to the time of application to participate in the fishery. The number of persons holding LLP licenses is likely to be less than the total number of LLP licenses because a person may hold more than one LLP license at a time.

Six entities made at least one rockfish landing from 1996 to 2002 and do not appear to qualify as an eligible rockfish harvesters. Five of these entities are not small entities and one entity qualifies as ''small'' by Small Business Administration (SBA) standards. The non-small entities owned five catcher/processors. The one small entity owns a catcher vessel. Entities that do not qualify for the Program either left the fishery, currently fish under interim LLP licenses, or do not hold a qualified LLP license. Moreover, the vessels the FRFA considers ''non-qualified'' cannot continue fishing for these species under the current LLP. The impacts to the small entities that are prohibited from fishing by the LLP were analyzed in the RIR/IRFA and FRFA prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this FRFA.

The community of Kodiak, Alaska, could be directly impacted by the Program. All of the eligible rockfish processors are located in Kodiak. The specific impacts on Kodiak cannot be determined until NMFS issues Rockfish QS and eligible rockfish harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the EA/RIR prepared for this action (see **ADDRESSES**).

Recordkeeping and reporting requirements. Implementation of the Program changes the overall reporting structure and recordkeeping requirements of the participants in the Central GOA rockfish fisheries. All participants are required to provide additional reports. Each harvester is 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 the Program administration.

NMFS developed new databases to monitor harvesting and processing allocations. These changes require the existing reporting systems.

To participate in the Program, persons are required to complete application forms, transfer forms, reporting requirements, and other collections-of-information. These forms are either required under existing regulations or are required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms. With the exception of specific equipment tests, which are performed by NMFS employees or other professionals, basic word processing skills are the only skills needed for the preparation of these reports or records.

NMFS has estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of $25 per burden hour. Persons are required to complete most of the forms at the start of the Program, such as the application to participate in the Program. Persons are required to complete some forms every year, such as the application to fish in a rockfish cooperative, limited access fishery, opt–out fishery, or entry level fishery. Additionally, reporting for purposes of catch accounting, such as checking-in or checking-out vessels to fish under a CQ permit, or transfer of CQ among rockfish cooperatives, is completed more frequently.

It will cost participants in the Program an estimated $56 to complete applications to participate in the Program, $55 for the application for CQ, application for the rockfish limited access fishery, or application to opt–out, and $61 to complete an inter-cooperative transfer of CQ.

It will cost participants in the Program an estimated $106 for annual rockfish cooperative report; $15 for rockfish cooperative catch report; $15 for a rockfish cooperative termination of fishing declaration; and $15 for each check-in/check-out for vessels authorized to fish under a CQ permit.

Description of significant alternatives and description of steps taken to minimize the significant economic impacts on small entities.

The FRFA presents an analysis of the three alternative programs for management of the Central GOA rockfish fisheries for catcher vessels: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3). Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council's preferred alternative(the rockfish cooperative alternative. These alternatives constitute the suite of ''significant alternatives'' for the purposes of the RFA. The following is a summary of the FRFA, focusing on the aspects that pertain to small entities.

Under the status quo, the Central GOA rockfish fisheries have followed the well known pattern associated with managed open access. Central GOA rockfish fisheries have been characterized by a ''race-for-fish'' capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. Participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to desires to improve economic, social, and structural conditions in many of the rockfish fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries. Many

small entities, as defined under RFA, are negatively impacted under current open access regulations. The management tools in the existing FMP (e.g., time/area restriction and LLP licenses) 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.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council determined that the institution of some form of rationalization program was needed to improve fisheries management in accordance with the Magnuson-Stevens Act. After an exhaustive public process spanning several years, the Council concluded that the 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. The preferred rockfish cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than an alternative that allocates limited processing licenses (Alternative 2 for catcher vessels), or that defines a smaller portion of the TAC for competition among a fixed number of vessels (Alternative 3 for catcher/processors).

The Program allocates annual harvesting privileges of rockfish and secondary species TAC to harvester rockfish cooperatives, creating a transferable access privilege as a share of the TAC, thus removing the ''common property'' attributes of the status quo on qualifying harvesters. The rationalization of the Central GOA fisheries will likely benefit the approximately 45 businesses that own harvest vessels and are considered small entities. In recent years these entities have competed in the race for fish against larger businesses. The rockfish cooperative alternative allows these operators to slow their rate of fishing and give more attention to efficiency and product quality.

The participants are permitted to form rockfish cooperatives that can lease or sell their allocations, and can obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels can be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the cooperative's CQ. Conversely, under open access, a vessel has to be large enough to outcompete the other fishermen and, hence, contributes to the overcapacity problems under the race for fish.

In addition, the Program provides 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 harvesters and processors under this management regime cannot be provided. Nonetheless, it appears that the rockfish cooperative alternative offers improvements over the status quo through the institution of a ''rights-based management'' structure. The rockfish cooperative alternative also includes provisions for fishery participants the Council expressly sought to include—specifically, rockfish processors and the community in which those processors have historically been active.

However, NMFS considered multiple alternatives to effectively implement specific provisions within the Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The groundfish landing report (internet version and optional fax version) will be used to debit CQ. All retained catch must be weighed, reported, and debited from the appropriate account under which the catch was harvested. Under recordkeeping and reporting, NMFS considered the options of a paper-based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method. Additionally, the electronic reporting system will provide continuous access to accounts. These provisions will make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS believes that the added benefits of the electronic reporting system outweigh any benefits of the paper-based system. However, NMFS will also provide an optional backup using existing telecommunication and paper-based methods, which will reduce the burden on small entities in more remote areas possessing less electronic infrastructure.

Under this rule, catcher/processors will be required to purchase and install motion-compensated scales to weigh all fish at-sea if participating as a vessel that is harvesting fish under a CQ permit, in the limited access fishery, or in the GOA during July. Such scales are estimated to cost on a one-time basis, approximately $69,000 per vessel. Currently, a flow scale costs $60,000, an observer platform scale $8,500, and test weights $500. Additional one-time costs associated with the installation of the scales are estimated to be between $10,000 and $40,000, depending on the extent to which the vessel must be reconfigured to install the scale. Scale monitoring requirements are estimated to cost approximately $6,235 per year. Based on discussions with equipment vendors, NMFS estimates that six catcher/processors will choose to fish under the Program and will be required to have scales. Based on public comments received on the proposed rule, NMFS modified this rule so that catcher/processor vessels that participate in the opt–out fishery are not required to purchase and install scales. This modification significantly reduces costs for vessels that are subject to sideboard limits, but are not harvesting rockfish in the Central GOA.

NMFS will increase observer coverage for Program participants in most cases. In similar NMFS-managed quota fisheries, NMFS requires that all fishing activity be observed. NMFS must maintain timely and accurate records of harvests in fisheries with small allocations that are harvested by a fleet with a potentially high harvest rate. Additionally, halibut PSC and halibut mortality rates must be monitored. Such monitoring can only be accomplished through the use of onboard observers. Although this imposes additional costs, participants in the fishery can form rockfish cooperatives, which will limit the number of vessels required to harvest a cooperative's CQ, and organize fishing operations to limit the amount of time when additional observer coverage is required to offset additional costs. The exact overall additional observer costs per vessel cannot be predicted because costs will vary with the specific fishing operations of that vessel. NMFS estimates that a requirement for increased observer coverage will cost approximately $400 per day. Additional costs may be associated with catcher/processors that reconfigure their vessels to ensure that adequate space is available for the additional observer. These costs cannot be predicted and will vary from vessel to vessel depending on specific conditions on that vessel. Based on public comments received on the proposed rule, NMFS modified this rule to reduce observer costs applicable to catcher/processor vessels in the opt–out fishery from a 200 percent observer coverage level (i.e., two observers onboard the vessel) to 100

percent observer coverage level (i.e., one observer onboard the vessel). This change will substantially reduce the costs that this portion of the fishery will incur, but a precise cost estimate is not available at this time.

For monitoring of processing activity, it will cost shore-based processors approximately $416 to complete the catch monitoring plan and an additional $2,800 annually to complete all landing reports.

NMFS determined that a VMS program is essential to the proper enforcement of the Program. Therefore, all vessels, except for non-trawl entry level vessels, participating in the Program are required to participate in a VMS program. Depending on which brand of VMS a vessel chooses to purchase, NMFS estimates that this requirement will impose a cost of $2,000 per vessel for equipment purchase, $780 for installation and maintenance, and $5 per day for data transmission costs. NMFS does not estimate that all vessels participating in the Program would incur all of these costs because trawl vessels that may participate in the Program are already subject to VMS requirements under existing regulations and installed and operate VMS units to meet those requirements.

NMFS has determined that special catch handling requirements for catcher/processors may subject vessel owners and operators to additional costs depending on the monitoring option chosen. The costs for providing line of sight for observer monitoring are highly variable depending on bin modifications the vessel may make, the location of the observer sample station, and the type of viewing port installed. These costs cannot be estimated with existing information.

Because NMFS has chosen to implement the video option using performance standards, the costs for a vessel to implement this option can be quite variable, depending on the nature of the system chosen. In most cases, the system is expected to consist of one digital video recorder (DVR)/computer system and between two and five cameras. DVR systems range in price from $1,500 to $10,000, and cameras cost from $75 to $300 each. Data storage costs will vary depending on the frame rate, color density, amount of compression, image size, and need for redundant storage capacity. NMFS estimates data storage will cost between $400 and $3,000 per vessel.

Installation costs will be a function of where the DVR/computer can be located in relation to an available power source, cameras, and the observer sampling station. NMFS estimates that a fairly simple installation will cost approximately $2,000, and a complex installation will cost approximately $10,000, per vessel. However, these costs can be considerably lower if the vessel owner chooses to install the equipment while upgrading other wiring. Thus, total system costs, including DVR/computer equipment, cameras, data storage, and installation is expected to range between $4,050 per vessel for a very simple inexpensive system with low installation costs, and $24,500 per vessel for a complex, sophisticated system with high installation costs. Based on public comments received on the proposed rule, NMFS has modified the rule to remove the requirement for an observer sampling station for catcher/processor vessels participating in the opt–out fishery. This change will reduce costs of total system costs for the catch handling provisions, but the amount of the reduced costs cannot be predicted and will vary depending on the specific configuration of the vessel.

Annual system maintenance costs are difficult to estimate because much of this technology has not been extensively used at-sea in the United States. However, we estimate an annual cost of $680 to $4,100 per year based on a hard disk failure rate of 20 percent per year, and a DVR/computer lifespan of three years.

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. Changes in the monitoring and enforcement requirements applicable to catcher/processor vessels participating in the opt–out fishery are addressed in the previous paragraphs addressing motion compensated scales, observer coverage, and special catch handling requirements for catcher/processor vessels. NMFS has also relieved the requirement for a dedicated Program observer at entry level processing facilities, and the requirement that those facilities maintain a CMCP. These changes reduce costs to these entities, but do not undermine the overall monitoring goals of this Program given the small allocations available to the entry level fishery.

In response to the public comment requesting additional time to prepare and submit the annual applications for CQ, the rockfish limited access fishery, and opt–out fishery, NMFS changed the submittal date from December 1 of the year prior to fishing to March 1 of the year in which the person intends to fish. This deadline change provides both the time to gather records and coordinate with other participants in the fishery. NMFS has also improved the flexibility of rockfish cooperatives to designate specific vessels to fish under the CQ permit through a vessel check-in and check-out procedure. This change provides greater flexibility than the more lengthy proposed requirement to modify the CQ permit. The specific details of this vessel check-in/check-out procedure are detailed in the response to comment section of the preamble.

Collection-of-information

This rule contains collection–of–information requirements subject to the Paperwork Reduction Act (PRA) and that have been approved by the OMB under the control numbers listed below. Public reporting burdens per response for these requirements are listed by OMB control number.

OMB Control No. 0648–0545

Four (4) hours for annual rockfish cooperative report; 6 minutes for rockfish cooperative catch report; 4 hours for a letter of appeal, if denied a permit; and 15 minutes for a rockfish cooperative termination of fishing declaration, 2 hours for the application to participate in the Program; 2 hours for the application for CQ; 2 hours for the application for the limited access fishery; 2 hours for the application to opt-out; 2 hours for the application for inter-cooperative transfer; and 15 minutes for cooperative check-in/check-out for vessels authorized to fish CQ.

OMB Control No. 0648–0515

Fifteen (15) minutes for application for eLandings user ID; 35 minutes to electronically submit landing report and print receipts from eLandings.

OMB Control No. 0648–0445

Twelve (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 Control No. 0648–0401

35 minutes to electronically submit SPELR information (superceded by eLandings, 0515).

OMB Control No. 0648–0330

Forty (40) hours for catch monitoring requirements for catcher/processors; 40 hours for a CMCP; 10 minutes for observer sampling station inspection request; 1 hour for video monitoring system.

OMB Control No. 0648–0213

Fourteen (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.

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 regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e–mail to *David__Rostker@omb.eop.gov*, or fax to 202- 395–7285.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed a Web site that provides easy access to details of this final rule, including links to the final rule, and frequently asked questions regarding Program.

The relevant information available on the Web site is the Small Entity Compliance Guide. The Web site address is *http://www.fakr.noaa.gov*. Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 7, 2006.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR chapter IX, and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX —NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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 the entry ''*50 CFR*'' is amended by:

■ a. Revising entries ''679.4(g) and (k)''; and

■ b. Adding new entries ''679.4(n)'', ''679.5(r)'', and ''679.80'' through ''679.84'' in numerical order.

The additions and revisions 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 numbersbegin with 0648–)
* * * * * * *	
50 CFR	
* * * * * * *	
679.4(g) and (k)	-0334 and -0545
* * * * * * *	
679.4(n)	-0545
* * * * * * *	
679.5(r)	-0213, -0401, -0445, and -0545
* * * * * * *	
679.80	-0545
679.81	-0545
679.82	-0545
679.83	-0545
679.84	-0213, -0330, and -0545
* * * * * * *	

50 CFR Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108–199, 118 Stat. 110.

■ 4. In § 679.2, add the definitions of ''Cooperative quota (CQ)'', ''Eligible rockfish harvester'', ''Eligible rockfish processor'', ''Halibut PSC sideboard limit'', ''Initial rockfish QS pool'', ''Legal rockfish landing for purposes of qualifying for the Rockfish Program'', ''Non-allocated secondary species'', ''Official Rockfish Program record'', ''Opt–out fishery'', ''Primary rockfish species'', ''Rockfish cooperative'', ''Rockfish entry level fishery'', ''Rockfish entry level harvester'', ''Rockfish entry level processor'', ''Rockfish halibut PSC'', ''Rockfish limited access fishery'', ''Rockfish Program'', ''Rockfish Program fisheries'', ''Rockfish Program species'', ''Rockfish Quota Share (QS)'', ''Rockfish QS pool'', ''Rockfish QS unit'', ''Rockfish sideboard fisheries'', ''Secondary species'', ''Sector for purposes of the Rockfish Program'', ''Sideboard limit for purposes of the Rockfish Program'', ''Sideboard ratio for purposes of the Rockfish Program'', and ''Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program'' in alphabetical order to read as follows:

§ 679.2. Definitions.

* * * * *

Cooperative quota (CQ) means:

(1) The annual catch limit of a primary rockfish species or secondary species that may be harvested by a rockfish cooperative that may lawfully harvest an amount of the TAC for a primary rockfish species or secondary species while participating in the Rockfish Program;

(2) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while participating in the Rockfish Program (see *rockfish halibut PSC* in this section).

* * * * *

Eligible rockfish harvester means a person who is permitted by NMFS to hold rockfish QS.

Eligible rockfish processor means a person who is authorized by NMFS to receive and process primary rockfish

species and secondary rockfish species harvested by a rockfish cooperative or in a rockfish limited access fishery.

* * * * *

Halibut PSC sideboard limit means the maximum amount of halibut PSC that may be used from July 1 through July 31 by eligible rockfish harvesters or rockfish cooperatives in the West Yakutat District, Central GOA, and Western GOA as established under § 679.82(d), as applicable.

* * * * *

Initial rockfish QS pool means the sum of rockfish QS units established for a Rockfish Program fishery based on the official Rockfish Program record and used for the initial allocation of rockfish QS units and use cap calculations as described in § 679.82(a).

* * * * *

Legal rockfish landing for purposes of qualifying for the Rockfish Program means groundfish caught and retained in compliance with state and Federal regulations in effect at that time unless harvested and then processed as meal, and

(1) *For catcher vessels:* (i) The harvest of groundfish from the Central GOA regulatory area that is offloaded and recorded on a State of Alaska fish ticket during the directed fishing season for that primary rockfish species as established in Table 28 to this part; and

(ii) An amount of halibut PSC attributed to that sector during the directed fishing season for the primary rockfish species as established in Table 28 to this part.

(2) *For catcher/processors:* (i) The harvest of groundfish from the Central GOA regulatory area that is recorded on a Weekly Production Report based on harvests during the directed fishing season for that primary rockfish species as established in Table 28 to this part; and

(ii) An amount of halibut PSC attributed that sector during the directed fishing season for the primary rockfish species as established in Table 28 to this part.

* * * * *

Non-allocated secondary species (see *Rockfish Program species* in this section).

* * * * *

Official Rockfish Program record means information used by NMFS necessary to determine eligibility to participate in the Rockfish Program and assign specific harvest or processing privileges to Rockfish Program participants.

* * * * *

Opt–out fishery means the fishery conducted by persons who are eligible rockfish harvesters holding an LLP license endorsed for catcher/processor activity and who are not participating in a rockfish cooperative or the rockfish limited access fishery in the catcher/processor sector.

* * * * *

Primary rockfish species (see *Rockfish Program species* in this section).

* * * * *

Rockfish cooperative means a group of eligible rockfish harvesters who have chosen to form a rockfish cooperative under the requirements of § 679.81(i) in order to combine and harvest fish collectively under a CQ permit issued by NMFS.

Rockfish entry level fishery means the trawl and longline gear fisheries conducted under the Rockfish Program by rockfish entry level harvesters and rockfish entry level processors.

Rockfish entry level harvester means a person who is authorized by NMFS to harvest fish in the rockfish entry level fishery and who is not an eligible rockfish harvester.

Rockfish entry level processor means a person who is authorized by NMFS to receive and process fish harvested under the rockfish entry level fishery and who is not an eligible rockfish processor.

Rockfish halibut PSC means the amount of halibut PSC that may be used by a rockfish cooperative in the Central GOA as assigned on a CQ permit.

Rockfish limited access fishery means the fishery for primary rockfish species conducted by persons who are eligible rockfish harvesters or eligible rockfish processors and who are not participating in a rockfish cooperative or opt–out fishery for that applicable sector.

Rockfish Program means the program authorized under the authority of Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–199) and implemented under subpart G of this part to manage Rockfish Program fisheries.

Rockfish Program fisheries means one of following fisheries under the Rockfish Program:

(1) A rockfish cooperative in the catcher/processor sector;

(2) A rockfish cooperative in the catcher vessel sector;

(3) The limited access fishery in the catcher/processor sector;

(4) The limited access fishery in the catcher vessel sector;

(5) The opt–out fishery;

(6) The entry level trawl fishery; and

(7) The entry level longline gear fishery.

Rockfish Program species means the following species in the Central GOA regulatory area that are managed under the authority of the Rockfish Program:

(1) *Primary rockfish species* means northern rockfish, Pacific ocean perch, and pelagic shelf rockfish.

(2) *Secondary species* means the following species:

(i) Sablefish not allocated to the IFQ Program;

(ii) Thornyhead rockfish;

(iii) Pacific cod for the catcher vessel sector;

(iv) Rougheye rockfish for the catcher/processor sector; and

(v) Shortraker rockfish for the catcher/processor sector.

(3) *Non-allocated secondary species* means the following species:

(i) Aggregate forage fish, Atka mackerel, arrowtooth flounder, deep water flatfish, flathead sole, other rockfish, ''other species,'' pollock, rex sole, shallow water flatfish, and skates;

(ii) Pacific cod for the catcher/processor sector; and

(iii) Rougheye rockfish and shortraker rockfish for the catcher vessel sector.

Rockfish Quota Share (QS) means a permit the amount of which is based on legal rockfish landings for purposes of qualifying for the Rockfish Program and that are assigned to an LLP license.

Rockfish QS pool means the sum of rockfish QS units established for the Rockfish Program fishery based on the official Rockfish Program record.

Rockfish QS unit means a measure of QS based on legal rockfish landings.

Rockfish sideboard fisheries means fisheries that are assigned a sideboard limit that may be harvested by participants in the Rockfish Program.

* * * * *

Secondary species (see *Rockfish Program species* in this section).

Sector for purposes of the Rockfish Program means:

(1) *Catcher/processor sector:* those eligible rockfish harvesters who hold an LLP license with a catcher/processor designation and who are eligible to receive rockfish QS that may result in CQ that may be harvested and processed at sea.

(2) *Catcher vessel sector:* those eligible rockfish harvesters who hold an LLP license who are eligible to receive rockfish QS that may result in CQ that may not be harvested and processed at sea.

* * * * *

Sideboard limit for purposes of the Rockfish Program means:

(1) The maximum amount of northern rockfish, Pacific ocean perch, and

pelagic shelf rockfish that may be harvested by all vessels in the Rockfish Program in all areas as specified under § 679.82(d) through (h), as applicable;

(2) The maximum amount of BSAI Pacific cod that may be harvested by catcher vessels in all areas as specified under § 679.82(d) through (h), as applicable; or

(3) The maximum amount of halibut PSC that may be used by all vessels in all areas as specified under § 679.82(d) through (h), as applicable.

Sideboard ratio for purposes of the Rockfish Program means a portion of a sideboard limit for a groundfish fishery that is assigned to the catcher vessel sector or catcher/processor sector based on the catch history of vessels in that sector.

* * * * *

Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program means a relationship between two or more persons in which one directly or indirectly owns or controls a 10 percent or greater interest in, or otherwise controls, another person; or a third person which directly or indirectly owns or controls, or otherwise controls a 10 percent or greater interest in both. For the purpose of this definition, the following terms are further defined:

(1) *Person.* A person is a person as defined in this section.

(2) *Indirect interest.* An indirect interest is one that passes through one or more intermediate persons. A person's percentage of indirect interest in a second person is equal to the person's percentage of direct interest in an intermediate person multiplied by the intermediate person's direct or indirect interest in the second person.

(3) *Controls a 10 percent or greater interest.* A person controls a 10 percent or greater interest in a second person if the first person:

(i) Controls a 10 percent ownership share of the second person; or

(ii) Controls 10 percent or more of the voting or controlling stock of the second person.

(4) *Otherwise controls.* A person otherwise controls another person, if it has:

(i) The right to direct, or does direct, the business of the other person;

(ii) 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 other person;

(iii) The right to direct, or does direct, the Rockfish Program fishery processing activities of that other person;

(iv) The right to restrict, or does restrict, the day-to-day business activities and management policies of the other person through loan covenants;

(v) The right to derive, or does derive, either directly, or through a minority shareholder or partner, and in favor of the other person, a significantly disproportionate amount of the economic benefit from the processing of fish by that other person;

(vi) The right to control, or does control, the management of, or to be a controlling factor in, the other person;

(vii) The right to cause, or does cause, the purchase or sale of fish processed by that person;

(viii) Absorbs all of the costs and normal business risks associated with ownership and operation of the other person; or

(ix) Has the ability through any other means whatsoever to control the other person.

* * * * *

■ 5. In § 679.4, paragraphs (a)(1)(xii), (b)(6)(iii), (k)(11), and (n) are added to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through end of:	For more information, see. . .
* * * * * * *		
(xii) Rockfish Program		
(A) CQ	Specified fishing year	§ 679.81(e)(4)
(B) Rockfish Limited Access Fishery	Specified fishing year	§ 679.81(e)(5)
(C) Opt-out Fishery	Specified fishing year	§ 679.81(e)(6)
(D) Rockfish Entry Level Fishery	Specified fishing year	§ 679.81(e)(7)

* * * * *

(b) * * *

(6) * * *

(iii) NMFS will reissue a Federal fisheries permit to any person who holds a Federal fisheries permit issued for a vessel if that vessel was used to make any legal rockfish landings and is subject to a sideboard limit as described under § 679.82(d) through (h).

* * * * *

(k) * * *

(11) *Rockfish QS*—(i) *General.* In addition to other requirements of this part, a license holder must have rockfish QS on his or her groundfish LLP license to conduct directed fishing for Rockfish Program fisheries with trawl gear.

(ii) *Eligibility requirements for rockfish QS.* The eligibility requirements to receive rockfish QS are established in § 679.80(b).

* * * * *

(n) *Rockfish Program*—(1) *Cooperative quota (CQ).* (i) A CQ permit is issued annually to a rockfish cooperative if the members of that rockfish cooperative have submitted a complete and timely application for CQ as described at § 679.81(e)(4) that is subsequently approved by the Regional Administrator. A CQ permit authorizes a rockfish cooperative to participate in the Rockfish Program. The CQ permit will indicate the amount of primary rockfish species and secondary species that may be harvested by the rockfish cooperative, and the amount of rockfish halibut PSC that may be used by the rockfish cooperative. The CQ permit will list the members of the rockfish cooperative, the vessels that are authorized to fish under the CQ permit for that rockfish cooperative, and the eligible rockfish processor with whom that rockfish cooperative is associated, if applicable.

(ii) A CQ permit is valid under the following circumstances:

(A) Until the end of the year for which the CQ permit is issued;

(B) Until the amount harvested is equal to the amount specified on the CQ permit for all primary rockfish species, secondary species, and rockfish halibut PSC;

(C) Until the permit is modified by transfers under § 679.81(f);

(D) Until the permit is voided through an approved rockfish cooperative termination of fishing declaration; or

(E) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(iii) A legible copy of the CQ permit must be carried on board the vessel(s) used by the rockfish cooperative.

(2) *Rockfish cooperative termination of fishing declaration.* (i) A rockfish

cooperative may choose to extinguish its CQ permit through a declaration submitted to NMFS.

(ii) This declaration may only be submitted to NMFS using the following methods:

(A) Fax: 907–586–7354;

(B) Hand Delivery or Carrier. NMFS, Room 713, 709 4th Street, Juneau, AK 99801; or

(C) By mail: Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668

(iii) A Rockfish cooperative termination of fishing declaration must include the following information:

(A) CQ permit number;

(B) The date the declaration is submitted; and

(C) The rockfish cooperative's legal name, NMFS Person ID, the permanent business address, telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its designated representative, and the printed name and signature of the designated representative of the rockfish cooperative.

(iv) NMFS will review the declaration and notify the rockfish cooperative's designated representative once the declaration has been approved.

(v) Upon approval of a declaration, the CQ for all primary rockfish species and secondary species will be set to zero, rockfish halibut PSC assigned to that rockfish cooperative will be reapportioned under the provisions described at § 679.21(d)(5)(iii)(B) and that rockfish cooperative may not receive any CQ for any primary rockfish species, secondary species, and rockfish halibut PSC by transfer for the remainder of that calendar year.

(3) *Eligible rockfish processor.* (i) The Regional Administrator will issue an eligible rockfish processor permit to persons who have submitted a complete application described at § 679.81(d), that is subsequently approved by the Regional Administrator. An eligible rockfish processor permit authorizes a shoreside processor or stationary floating processor to receive fish harvested under the Rockfish Program, except for fish harvested under the rockfish entry level fishery.

(ii) A permit is valid under the following circumstances:

(A) Until the permit is modified by transfers under § 679.81(g); or

(B) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or 15 CFR part 904.

(iii) A legible copy of the eligible rockfish processor permit must be available at the facility at which Rockfish Program fish are received.

■ 6. Section 679.5 is amended by:

■ A. Removing and reserving paragraph (a)(4).

■ B. Redesignating paragraphs (e)(3) through (e)(7) as paragraphs (e)(4) through (e)(8), respectively.

■ C. Adding paragraphs (e)(3) and (r).

■ D. Revising the introductory text of paragraph (e) and paragraphs (e)(1) and (e)(2).

■ E. In newly redesignated paragraph (e)(4), remove the phrase ''paragraphs (e)(1) and (2)'' and add in its place the phrase ''paragraphs (e)(1), (e)(2), and (e)(3)''.

■ F. In newly redesignated paragraph (e)(5)(ii), remove the phrase ''paragraph (e)(6)'' and add in its place the phrase ''paragraph (e)(7)''.

■ G. In newly redesignated paragraph (e)(5)(iii), remove the phrase ''paragraph (e)(4)(iv)'' and add in its place the phrase ''paragraph (e)(5)(iv)''.

The additions and revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(e) *Shoreside processor electronic logbook report (SPELR).* The owner or manager of a shoreside processor or stationary floating processor:

(1) That receives groundfish from AFA catcher vessels or receives pollock harvested in a directed pollock fishery from catcher vessels:

(i) Must use SPELR or NMFS–approved software to report every delivery of harvests made during the fishing year, including but not limited to groundfish from AFA catcher vessels and pollock from a directed pollock fishery participant; and

(ii) Must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

(2) That receives groundfish from catcher vessels that are authorized as harvesters in the Rockfish Program:

(i) Must use SPELR or NMFS–approved software to report every delivery of harvests made during the fishing year, including but not limited to groundfish from catcher vessels authorized as harvesters in the Rockfish Program; and

(ii) Must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

(3) That receives groundfish and that is not required to use SPELR under paragraph (e)(1) or (e)(2) of this section:

(i) May use, upon approval by the Regional Administrator, SPELR or NMFS–approved software in lieu of the shoreside processor DCPL and shoreside processor WPR.

(ii) If using SPELR, must maintain the SPELR and printed reports as described in paragraphs (e) and (f) of this section.

* * * * *

(r) *Rockfish Program*—(1) *General.* The owners and operators of catcher vessels, catcher/processors, shoreside processors, and stationary floating processors authorized as participants in the Rockfish Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a rockfish cooperative, rockfish limited access fishery, sideboard fishery, opt–out fishery, or rockfish entry level fishery as applicable at the time of catch or receipt of groundfish. All owners of catcher vessels, catcher/processors, shoreside processors, and stationary floating processors authorized as participants in the Rockfish Program must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(2) *Logbook*—(i) *DFL.* Operators of catcher vessels equal to or greater than 60 ft (18.3 m) LOA participating in a Rockfish Program fishery must maintain a daily fishing logbook for trawl gear as described in paragraphs (a) and (c) of this section.

(ii) *DCPL.* Operators of catcher/processors permitted in the Rockfish Program must use a daily cumulative production logbook for trawl gear as described in paragraph (a) of this section to record Rockfish Program landings and production.

(3) *SPELR.* Managers of shoreside processors or SFPs that are authorized as processors in the Rockfish Program must use SPELR or NMFS-approved software as described in paragraphs (e) and (f) of this section, instead of a logbook and WPR, to record Rockfish Program landings and production.

(4) *Check-in/check-out report, processors.* Operators or managers of a catcher/processor, mothership, stationary processor, or stationary floating processor that are authorized as processors in the Rockfish Program must submit check-in/check-out reports as described in paragraph (h) of this section.

(5) *Weekly production report (WPR).* Operators of catcher/processors that are authorized as processors in the Rockfish Program and that use a DCPL must submit a WPR as described in paragraph (i) of this section.

(6) *Product transfer report (PTR), processors.* Operators of catcher/processors and managers of shoreside

processors or SFPs that are authorized as processors in the Rockfish Program must submit a PTR as described in paragraph (g) of this section.

(7) *Rockfish cooperative catch report*—(i) *Applicability.* Operators of catcher/processors and managers of shoreside processors or SFPs that are authorized to receive fish harvested under a CQ permit in the Rockfish Program (see § 679.4(n)) must submit to the Regional Administrator a rockfish cooperative catch report detailing each cooperative's delivery and discard of fish, as described in paragraph (r)(7) of this section.

(ii) *Time limits and submittal.* (A) The rockfish cooperative catch report must be submitted by one of the following methods:

(*1*) An electronic data file in a format approved by NMFS mailed to: Sustainable Fisheries, P.O. Box 21668, Juneau, AK 99802–1668; or

(*2*) By fax: 907–586–7131.

(B) The rockfish cooperative catch report must be received by the Regional Administrator by 1200 hours, A.l.t. one week after the date of completion of a delivery.

(iii) *Information required.* The rockfish cooperative catch report must contain the following information:

(A) CQ permit number;

(B) ADF&G vessel registration number(s) of vessel(s) delivering catch;

(C) Federal processor permit number of processor receiving catch;

(D) Date the delivery was completed;

(E) Amount of fish (in lb) delivered, plus weight of at–sea discards;

(F) ADF&G fish ticket number(s) issued to catcher vessel(s).

(8) *Annual rockfish cooperative report*—(i) *Applicability.* A rockfish cooperative permitted in the Rockfish Program (see § 679.4(m)(1)) annually must submit to the Regional Administrator an annual rockfish cooperative report detailing the use of the cooperative's CQ.

(ii) *Time limits and submittal.* (A) The annual rockfish cooperative report must be submitted to the Regional Administrator by an electronic data file in a NMFS-approved format by fax: 907–586–7557; or by mail to the Regional Administrator, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668; and

(B) The annual rockfish cooperative report must be received by the Regional Administrator by December 15th of each year.

(iii) *Information required.* The annual rockfish cooperative report must include at a minimum:

(A) The cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the rockfish cooperative vessels on a vessel-by-vessel basis;

(B) The cooperative's actual retained and discarded catch of CQ, and sideboard limit (if applicable) by statistical area and vessel-by-vessel basis;

(C) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and

(D) A description of any actions taken by the cooperative in response to any members that exceeded their catch as allowed under the rockfish cooperative agreement.

(9) *Vessel monitoring system (VMS) requirements* (see § 679.28(f)).

(10) *Rockfish cooperative vessel check-in and check-out report*—(i) *Applicability*—(A) *Vessel check-in.* The designated representative of a rockfish cooperative must designate any vessel that is fishing under the rockfish cooperative's CQ permit before that vessel may fish under that CQ permit through a check-in procedure. The designated representative for a rockfish cooperative must submit this designation for a vessel:

(*1*) At least 48 hours prior to the time the vessel begins a fishing trip to fish under a CQ permit; and

(*2*) A check-in report is effective at the beginning of the first fishing trip after the designation has been submitted.

(B) *Vessel check-out.* The designated representative of a rockfish cooperative must designate any vessel that is no longer fishing under a CQ permit for that rockfish cooperative through a check-out procedure. This check-out report must be submitted within 6 hours after the effective date and time the rockfish cooperative wishes to end the vessel's authority to fish under the CQ permit. This designation is effective at:

(*1*) The end of a complete offload if that vessel is fishing under a CQ permit for a catcher vessel cooperative or the earlier of;

(*2*) The end of the weekending date as reported in a WPR if that vessel is fishing under a CQ permit for a catcher/processor cooperative; or

(*3*) The end of a complete offload if that vessel is fishing under a CQ permit for a catcher/processor cooperative.

(ii) *Submittal.* The designated representative of the rockfish cooperative must submit a vessel check-in or check-out report by one of the following methods:

(A) By mail: Sustainable Fisheries, P.O. Box 21668, Juneau, AK 99802–1668; or

(B) By fax: 907–586–7131.

(iii) *Information required.* The vessel check-in or check-out report must contain the following information:

(A) CQ permit number;

(B) ADF&G vessel registration number(s) of vessel(s) designated to fish under the CQ permit;

(C) USCG designation number(s) of vessel(s) designated to fish under the CQ permit; and

(D) Date and time when check-in or check-out begins.

(iv) *Limitations on vessel check-in and check-out.* (A) A rockfish cooperative may submit no more check-in reports in a calendar year than an amount equal to three times the number of LLP licenses that are assigned to that rockfish cooperative in that calendar year.

(B) A rockfish cooperative may submit no more check-out reports in a calendar year than an amount equal to three times the number of LLP licenses that are assigned to that rockfish cooperative in that calendar year.

■ 7. In § 679.7, paragraph (n) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(n) *Rockfish Program*—(1) *General.* (i) Fail to retain any primary rockfish species caught by a vessel that is assigned to a rockfish cooperative when that vessel is fishing under a CQ permit.

(ii) Fail to retain any primary rockfish species in the Central GOA caught by a vessel assigned to a rockfish limited access fishery, or to a rockfish entry level fishery, when that fishery is open.

(iii) Fail to retain any secondary species caught by a vessel assigned to a rockfish cooperative when that vessel is fishing under a CQ permit.

(iv) Use an LLP license assigned to a Rockfish Program fishery in any other Rockfish Program fishery other than the Rockfish Program fishery to which that LLP license was initially assigned for that fishing year.

(v) Operate a vessel assigned to a Rockfish Program Fishery in any other Rockfish Program fishery other than the Rockfish Program fishery to which that vessel was initially assigned for that fishing year.

(vi) Receive any primary rockfish species harvested in the entry level rockfish fishery if that person is an eligible rockfish processor.

(vii) Harvest any primary rockfish species in the entry level rockfish fishery if that person is an eligible rockfish harvester.

(viii) Harvest primary rockfish species, secondary species, or use halibut PSC assigned to a rockfish cooperative without a valid CQ permit.

(2) *Vessels operators participating in the Rockfish Program.* (i) Operate a vessel that is assigned to a rockfish cooperative and fishing under a CQ permit and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from May 1:

(A) Until November 15; or

(B) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(ii) Operate a vessel that is assigned to a rockfish limited access fishery and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for that rockfish limited access fishery for that sector.

(iii) Operate a vessel, other than a catcher/processor vessel assigned to the opt–out fishery, that is subject to a sideboard limit detailed at § 679.82(d) through (h), as applicable, and fail to follow the catch monitoring requirements detailed at § 679.84(c) through (e) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(iv) Operate a catcher/processor vessel assigned to the opt–out fishery, that is subject to a sideboard limit detailed at § 679.82(d) through (h), as applicable, and fail to follow the catch monitoring requirements detailed at § 679.84(d) from July 1 until July 31, if that vessel is harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(3) *VMS.* (i) Operate a vessel that is assigned to a rockfish cooperative and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from May 1:

(A) Until November 15; or

(B) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(ii) Operate a vessel that is assigned to a rockfish limited access fishery and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for that rockfish limited access fishery for that sector.

(iii) Operate a vessel that is subject to a sideboard limit detailed at § 679.82(d) through (h), as applicable, and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1 until July 31.

(iv) Operate a vessel assigned to the rockfish entry level fishery for trawl gear and fail to use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska from July 1:

(A) Until November 15; or

(B) Until NMFS closes all directed fishing for all primary rockfish species for the rockfish entry level fishery for trawl gear.

(4) *Catcher/processor vessels participating in the opt–out fishery.* Operate a vessel that is assigned to the opt–out fishery to directed fish for northern rockfish, Pacific ocean perch, or pelagic shelf rockfish in the Central GOA.

(5) *Shoreside and stationary floating processors eligible for the Rockfish Program*—(i) *Catch weighing.* Process any groundfish delivered by a vessel assigned to a Rockfish Program fishery, or subject to a sideboard limit not weighed on a scale approved by the State of Alaska. The scale must meet the requirements specified in § 679.28(c).

(ii) *Catch monitoring and control plan (CMCP).* Take deliveries of, or process, groundfish caught by a vessel in a rockfish cooperative or the rockfish limited access fishery as detailed under this subpart without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained at the facility and made available to authorized officers or NMFS-authorized personnel upon request.

(iii) *Delivery location limitations.* Receive or process outside of the geographic boundaries of the community that is designated on the permit issued by NMFS to the eligible rockfish processor any groundfish caught by a vessel while that vessel is harvesting groundfish under a CQ permit or in a rockfish limited access fishery.

(6) *Catcher vessels participating in the Rockfish Program.* Deliver groundfish harvested by a catcher vessel fishing under a CQ permit or in a rockfish limited access fishery to a shoreside or stationary floating processor that is not operating under an approved CMCP pursuant to § 679.28(g).

(7) *Rockfish cooperatives.* (i) Exceed the CQ permit amount assigned to that rockfish cooperative for any Rockfish Program species.

(ii) Exceed any sideboard limit assigned to a rockfish cooperative in the catcher/processor sector.

(iii) Operate a vessel assigned to a rockfish cooperative to fish under a CQ permit unless the rockfish cooperative has notified NMFS that the vessel is fishing under a CQ permit as described under § 679.5(r)(10).

(iv) Operate a vessel fishing under the authority of a CQ permit in the catcher vessel sector and to have any Pacific ocean perch, pelagic shelf rockfish, northern rockfish, sablefish, thornyhead rockfish, aboard the vessel unless those fish were harvested under the authority of a CQ permit.

(v) Operate a vessel fishing under the authority of a CQ permit in the catcher vessel sector and to have any Pacific cod aboard the vessel unless those fish were harvested under the authority of a CQ permit.

(8) *Use caps.* Exceed the use caps that apply under § 679.82(a).

■ 8. In § 679.20, paragraphs (e)(1), (e)(2)(ii), and (f)(2) are revised to read as follows:

§ 679.20 General Limitations.

* * * * *

(e) * * *

(1) *Proportion of basis species.* The maximum retainable amount of an incidental catch species is calculated as a proportion of the basis species retained on board the vessel using:

(i) The retainable percentages in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries); and

(ii) Table 11 to this part for the BSAI species categories.

(2) * * *

(ii) To obtain these individual retainable amounts, multiply the appropriate retainable percentage for the incidental catch species/basis species combination, set forth in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries), and Table 11 to this part for the BSAI species categories, by the amount of that basis species, in round-weight equivalents.

* * * * *

(f) * * *

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, or any groundfish species for which directed fishing is closed, may not be used to calculate retainable amounts of other groundfish species. Only fish harvested under the CDQ Program may be used to calculate retainable amounts of other CDQ

species. Only primary rockfish species harvested under the Rockfish Program may be used to calculate retainable amounts of other species, as provided in Table 30 to this part.

* * * * *

■ 9. In § 679.21, paragraph (d)(5)(iii) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(5) * * *

(iii) *Unused seasonal apportionments.* (A) Unused seasonal apportionments of halibut PSC limits specified for trawl, hook-and-line, or pot gear will be added to the respective seasonal apportionment for the next season during a current fishing year; and

(B) Unused halibut PSC that had been allocated as CQ that has not been used by a rockfish cooperative will be added to the last seasonal apportionment for trawl gear during the current fishing year:

(*1*) After November 15; or

(*2*) After the effective date of a declaration to terminate fishing.

* * * * *

■ 10. In § 679.28, paragraphs (b)(2)(v), (d)(8)(ii), (f)(6), (g) introductory text, (g)(1) and (g)(2) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(b) * * *

(2) * * *

(v) Where will scale inspections be conducted? Scales inspections by inspectors paid by NMFS will be conducted on vessels tied up at docks in Kodiak, Alaska, Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

* ** * *

(d) * * *

(8) * * *

(ii) Where will observer sample station inspections be conducted? Inspections will be conducted on vessels tied up at docks in Kodiak, Alaska, Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

* * * * *

(f) * * *

(6) *When must the VMS transmitter be transmitting?* Your vessel's transmitter must be transmitting if:

(i) You operate a vessel in any reporting area (see definitions at § 679.2) off Alaska while any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal Fisheries Permit under § 679.4(b)(5)(vi), is open.

(ii) You operate a federally permitted vessel in the Aleutian Islands subarea;

(iii) You operate a federally permitted vessel in the GOA and have mobile bottom contact gear on board; or

(iv) When that vessel is required to use functioning VMS equipment in the Rockfish Program as described in § 679.7(n)(3).

(g) *Catch monitoring and control plan requirements (CMCP)*—(1) *What is a CMCP?* A CMCP is a plan submitted by the owner and manager of a processing plant, and approved by NMFS, detailing how the processing plant will meet the catch monitoring and control standards detailed in paragraph (g)(7) of this section.

(2) *Who is required to prepare and submit a CMCP for approval?* The owner and manager of shoreside or stationary floating processors receiving fish harvested in the following fisheries must prepare, submit, and have approved a CMCP prior to the receipt of fish harvested in these fisheries:

(i) AFA pollock,

(ii) AI directed pollock,

(iii) Rockfish Program, unless those fish are harvested under the entry level rockfish fishery as described under § 679.83.

* * * * *

■ 11. In § 679.50, paragraphs (g)(1)(iii)(B) introductory text, and (g)(1)(iii)(B)(*1*) are revised and (c)(2)(vii), (c)(7), and (d)(7) are added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(2) * * *

(vii) *Rockfish Program.* In retained catch from Rockfish Program fisheries.

* * * * *

(7) *Rockfish Program*—(i) *Catcher/processor vessel*—(A) *Rockfish cooperative.* A catcher/processor vessel that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under a CQ permit must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process in the Central GOA from May 1 through the earlier of:

(*1*) November 15; or

(*2*) The effective date and time of an approved rockfish cooperative termination of fishing declaration.

(B) *Rockfish limited access fishery.* A catcher/processor vessel harvesting fish allocated to the rockfish limited access fishery for the catcher/processor sector must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process in the Central GOA from July 1 through the earlier of:

(*1*) November 15; or

(*2*) The date and time NMFS closes all directed fishing for all primary rockfish species in the rockfish limited access fishery for the catcher/processor sector.

(C) *Sideboard fishery.* A catcher/processor vessel, other than a catcher/processor vessel assigned to the opt–out fishery, that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, must have onboard at least two NMFS-certified observers for each day that the vessel is used to harvest or process from July 1 through July 31 while harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(D) *Observer lead level 2 requirements.* At least one of these observers must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction at paragraph (c)(7)(i)(E) of this section would otherwise preclude sampling as required.

(E) *Observer workload.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24-hour period.

(F) *Sideboard fishery for catcher/processor vessels in the opt–out fishery.* (i) A catcher/processor vessel assigned to the opt–out fishery, that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, must have onboard at least one NMFS-certified observer for each day that the vessel is used to harvest or process from July 1 through July 31 while harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(ii) *Catcher vessels*—(A) *Rockfish cooperative.* A catcher vessel that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit must have onboard a NMFS-certified observer at all times the vessel is used to harvest fish in the Central GOA from May 1 through the earlier of:

(*1*) November 15; or

(*2*) The effective date and time of an approved rockfish cooperative termination of fishing declaration.

(B) *Rockfish limited access fishery.* A catcher vessel harvesting fish allocated to the rockfish limited access fishery for the catcher vessel sector must have onboard a NMFS-certified observer onboard at all times the vessel is used to harvest in the Central GOA from July 1 through the earlier of:

(*1*) November 15; or

(*2*) The date and time NMFS closes all directed fishing for all primary rockfish species in the rockfish limited access fishery for the catcher vessel sector.

(C) *Sideboard fishery.* A catcher vessel that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, must have onboard a NMFS-certified observer at all times the vessel is used to harvest from July 1 through July 31 while harvesting fish in the West Yakutat District, Central GOA, or Western GOA management areas.

(d) * * *

(7) *Rockfish Program*—(i) *Coverage level.* A shoreside or stationary floating processor must have a NMFS-certified observer for each 12 consecutive hour period in each calendar day during which it receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section. A shoreside or stationary floating processor that receives deliveries or processes catch from a catcher vessel described at paragraph (c)(7)(ii) of this section for more than 12 consecutive hours in a calendar day is required to have two NMFS-certified observers each of these days.

(ii) *Multiple processors.* An observer deployed to a shoreside or stationary floating processor that receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section that were harvested under the Rockfish Program fisheries may not be assigned to cover more than one processor during a calendar day.

(iii) *Observers transferring between vessels and processors.* An observer transferring from a catcher vessel delivering to a shoreside or stationary floating processor that receives deliveries from a catcher vessel described at paragraph (c)(7)(ii) of this section may not be assigned to cover the shoreside or stationary floating processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is complete.

(iv) *Observer coverage limitations.* Observer coverage requirements at paragraph (d)(7) of this section are in addition to observer coverage requirements in other fisheries. Observer coverage of deliveries of groundfish harvested by catcher vessels described at paragraph (c)(7)(ii) of this section are not counted for purposes of meeting minimum delivery standards applicable to groundfish at a shoreside processor or stationary floating processor. Any observer coverage of deliveries by catcher vessels not described at paragraph (c)(7)(ii) of this section that occur when the Program observer is present at that shoreside processor or stationary floating processor during that calendar day will be counted towards the coverage requirements for that month.

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor or mothership that is required to carry one or more observers, or a catcher vessel required to carry an observer as specified in paragraph (c)(1)(iv) or (c)(7)(ii) of this section:

(*1*) *Hardware and software.* Make available for use by the observer a personal computer in working condition that contains: a full Pentium 120Mhz or greater capacity processing chip, at least 256 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 98 (or more recent) compatible operating system, an operating mouse, a 3.5–inch (8.9 cm) floppy disk drive, and a readable CD ROM disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. Except for a catcher vessel described at paragraph (c)(7)(ii) of this section, the computer equipment specified in paragraph (g)(1)(iii)(B) of this section must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Personal computers utilizing a modem must have at least a 28.8 kbs Hayes-compatible modem.

* * * * *

■ 12. Subpart G, consisting of §§ 679.80 through 679.84, is added to read as follows:

Subpart G—Rockfish Program

Sec.
679.80 Initial allocation of rockfish QS.
679.81 Rockfish Program annual harvester and processor privileges.
679.82 Rockfish Program use caps and sideboard limits.
679.83 Rockfish Program entry level fishery.
679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

Subpart G—Rockfish Program

§ 679.80 Initial allocation of rockfish QS.

Regulations under this subpart were developed by National Marine Fisheries Service to implement Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–199). Additional regulations that implement specific portions of the Rockfish Program are set out at: § 679.2 Definitions, § 679.4 Permits, § 679.5 Recordkeeping and reporting, § 679.7 Prohibitions, § 679.20 General limitations, § 679.21 Prohibited species bycatch management, § 679.28 Equipment and operational requirements, and § 679.50 Groundfish Observer Program.

(a) *Applicable areas and duration*—(1) *Applicable areas.* The Rockfish Program applies to Rockfish Program fisheries in the Central GOA Regulatory Area and rockfish sideboard fisheries in the GOA and BSAI.

(2) *Duration.* The Rockfish Program authorized under this part expires on December 31, 2008.

(3) *Seasons.* The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

(i) *Rockfish entry level fishery—longline gear vessels.* Fishing by vessels participating in the longline gear portion of the rockfish entry level fishery is authorized from 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., November 15.

(ii) *Rockfish entry level fishery—trawl vessels.* Fishing by vessels participating in the trawl gear portion of the rockfish entry level fishery is authorized from 1200 hours, A.l.t., May 1 through 1200 hours, A.l.t., November 15.

(iii) *Rockfish cooperative.* Fishing by vessels participating in a rockfish cooperative is authorized from 1200 hours, A.l.t., May 1 through 1200 hours, A.l.t., November 15.

(iv) *Rockfish fishery—rockfish limited access fishery.* Fishing by vessels participating in the rockfish limited access fishery is authorized from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t., November 15.

(b) *Eligibility for harvesters to participate in the Rockfish Program*—(1) *Eligible rockfish harvester.* A person is eligible to participate in the Rockfish Program as an eligible rockfish harvester if that person:

(i) Holds a permanent fully transferrable LLP license at the time of application to participate in the Rockfish Program that:

(A) Is endorsed for Central GOA groundfish with a trawl gear designation; and

(B) Has a legal rockfish landing of any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish; and

(ii) Submits a timely application to participate in the Rockfish Program that is approved by NMFS.

(2) *Rockfish entry level fishery harvester.* A person is eligible to participate in the Rockfish Program as a rockfish entry level fishery harvester if that person:

(i) Holds a valid LLP license endorsed for Central GOA groundfish at the time of application for the entry level fishery;

(ii) Submits a timely application for the entry level fishery that is approved by NMFS; and

(iii) That person does not hold a permanent fully transferrable LLP license that is endorsed for Central GOA groundfish with a trawl designation and has a legal rockfish landing of any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish.

(3) *Assigning a legal rockfish landing to an LLP license.* A legal rockfish landing is assigned to an eligible LLP license endorsed for the Central GOA management area with a trawl gear designation if that legal rockfish landing was made onboard a vessel that gave rise to that LLP license prior to the issuance of that LLP license, or that legal rockfish landing was made on a vessel using trawl gear operating under the authority of that LLP license.

(4) *Legal rockfish landings assigned to the catcher/processor sector.* A legal rockfish landing for a primary rockfish species is assigned to the catcher/processor sector if:

(i) The legal rockfish landing of that primary rockfish species was harvested and processed onboard a vessel during the season dates for that primary rockfish species as established in Table 28 to this part; and

(ii) The legal rockfish landings that were derived from that vessel resulted in, or were made under the authority of, an eligible LLP license that is endorsed for Central GOA groundfish fisheries with trawl gear with a catcher/processor designation.

(5) *Legal rockfish landings assigned to the catcher vessel sector.* A legal rockfish landing for a primary rockfish species is assigned to the catcher vessel sector if:

(i) The legal rockfish landing of that primary rockfish species was harvested and not processed onboard a vessel during the season dates for that primary rockfish species as established under Table 28 to this part; and

(ii) The legal rockfish landings that were derived from that vessel resulted in, or were made under the authority of, an eligible LLP license that is endorsed for Central GOA groundfish fisheries with trawl gear; and

(iii) Those legal rockfish landings do not meet the criteria for being a legal rockfish landing assigned to the catcher/processor sector as defined in paragraph (b)(4) of this section.

(c) *Eligibility for processors to participate in the Rockfish Program*—(1) *Eligible rockfish processor.* A person is eligible to participate in the Rockfish Program as an eligible rockfish processor if that person:

(i) Holds the processing history of a shoreside processor or stationary floating processor that received not less than 250 metric tons in round weight equivalents of aggregate legal rockfish landings of primary rockfish species each calendar year in any four of the five calendar years from 1996 through 2000 during the season dates for that primary rockfish species as established in Table 28 to this part;

(ii) Submits a timely application to participate in the Rockfish Program that is approved by NMFS; and

(iii) That person or successor-in-interest exists at the time of application to participate in the Rockfish Program.

(2) *Holder of processing history.* A person holds the processing history of a shoreside processor or stationary floating processor if that person:

(i) Owns the shoreside processor or stationary floating processor at which the legal rockfish landings were received at the time of application to participate in the Rockfish Program, unless that processing history has been transferred to another person by the express terms of a written contract that clearly and unambiguously provides that such processing history has been transferred; or

(ii) (A) Holds the processing history of a shoreside processor or stationary floating processor at which the legal rockfish landings were received and obtained that processing history by the express terms of a written contract that clearly and unambiguously provides that such processing history is held by that person at the time of application to participate in the Rockfish Program; and

(B) The shoreside processor or stationary floating processor from which that processing history is derived did not have a valid Federal Processor Permit at the time that the processing history had been transferred by the express terms of a written contract.

(3) *Eligible entry level fishery processor.* A person is eligible to participate in the Rockfish Program as an eligible entry level fishery processor if that person is not an eligible rockfish processor.

(d) *Official Rockfish Program record*—(1) *Use of the official Rockfish Program record.* The official Rockfish Program record will contain information used by the Regional Administrator to determine:

(i) The amount of legal rockfish landings and resulting processing history assigned to a shoreside processor or stationary floating processor;

(ii) The amount of legal rockfish landings assigned to an LLP license;

(iii) The amount of rockfish QS resulting from legal rockfish landings assigned to an LLP license held by an eligible rockfish harvester;

(iv) Sideboard ratios assigned to eligible rockfish harvesters;

(v) The amount of legal rockfish landings assigned to an eligible rockfish processor for purposes of establishing a rockfish cooperative with eligible rockfish harvesters; and includes:

(vi) All other information used by NMFS that is necessary to determine eligibility to participate in the Rockfish Program and assign specific harvest or processing privileges to Rockfish Program participants.

(2) *Presumption of correctness.* The official Rockfish Program record is presumed to be correct. An applicant to participate in the Rockfish Program has the burden to prove otherwise. For the purposes of creating the official Rockfish Program 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 license was derived during the calendar years 2000 and 2001, unless written documentation is provided that establishes otherwise.

(ii) If more than one person is claiming the same legal rockfish landing, then each LLP license for which the legal rockfish landing is being claimed will receive an equal share of any resulting rockfish QS unless the applicants can provide written documentation that establishes an alternative means for distributing the catch history to the LLP licenses.

(3) *Documentation.* (i) Only legal rockfish landings, as defined in § 679.2,

shall be used to establish an allocation of rockfish QS or a sideboard ratio.

(ii) Evidence of legal rockfish landings used to establish processing history for an eligible rockfish processor is limited to State of Alaska fish tickets.

(4) *Non-severability of legal rockfish landings.* Legal rockfish landings are non-severable:

(i) From the LLP license to which those legal rockfish landings are assigned according to the official Rockfish Program record; or

(ii) From the shoreside processor or stationary floating processor at which the legal rockfish landings were received unless the processing history assigned to that shoreside processor or stationary floating processor is transferred, in its entirety, to another person under the provisions in paragraph (c)(2)(ii) of this section.

(e) *Application to participate in the Rockfish Program*—(1) *Submission of application to participate in the Rockfish Program.* A person who wishes to participate in the Rockfish Program as an eligible rockfish harvester or eligible rockfish processor must submit a timely and complete application to participate in the Rockfish Program. This application may only be submitted to NMFS using the following methods:

(i) Mail: Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) Fax: 907–586–7354; or

(iii) Hand Delivery or Carrier: NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Forms.* Forms are available through the internet on the NMFS Alaska Region website at *http://www.fakr.noaa.gov*, or by contacting NMFS at 800–304–4846, Option 2.

(3) *Deadline.* A completed application to participate in the Rockfish Program must be received by NMFS no later than 1700 hours A.l.t. on January 2, 2007, or if sent by U.S. mail, postmarked by that time.

(4) *Contents of application.* A completed application must contain the following information:

(i) *Applicant identification.* (A) The applicant's name, NMFS person ID (if applicable), tax ID or social security number, permanent business mailing address, business telephone number, and business fax number, and e-mail (if available);

(B) Indicate (YES or NO) if the applicant is a U.S. citizen; if YES, enter his or her date of birth;

(C) Indicate (YES or NO) if the applicant is a U.S. corporation, partnership, association, or other business entity; if YES, enter the date of incorporation;

(D) Indicate (YES or NO) if the applicant is a successor-in-interest to a deceased individual or to a non-individual no longer in existence, if YES attach evidence of death or dissolution;

(E) For an applicant claiming legal rockfish landings associated with an LLP license, enter the following information for each LLP license: LLP license number, name of the original qualifying vessel(s) (OQV(s)) that gave rise to the LLP license, ADF&G vessel registration number of the OQV, and names, ADF&G vessel registration numbers, and USCG documentation numbers of all other vessels used under the authority of this LLP license, including dates when landings were made under the authority of an LLP license for 2000 and 2001;

(F) For an applicant claiming legal rockfish landings in the catcher/processor sector, enter the following information: LLP license numbers, vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of vessels on which legal rockfish landings were caught and processed.

(ii) *Processor eligibility.* (A) Indicate (YES or NO) if the applicant received at least 250 metric tons in round weight equivalent of aggregate legal rockfish landings of primary rockfish species each calendar year in any four of the five calendar years from 1996 through 2000 during the season dates for that primary rockfish species as established in Table 28 to this part;

(B) If the answer to paragraph (e)(4)(ii)(A) of this section is YES, enter the facility name and ADF&G processor code(s) for each processing facility where legal rockfish landings were received and the qualifying years or seasons for which applicant is claiming eligibility.

(C) Enter the name of the community in which the primary rockfish species were received. The community is either:

(*1*) The city, if the community is incorporated as a city within the State of Alaska;

(*2*) The borough, if the community is not a city incorporated within the State of Alaska, but the community is in a borough incorporated within the State of Alaska.

(D) Enter the four calendar years from 1996 through 2000 that NMFS will use to determine the percentage of legal rockfish landings received by that eligible rockfish processor for purposes of forming an association with a rockfish cooperative.

(E) Submit a copy of the contract that demonstrates that the legal processing history and rights to apply for and receive processor eligibility based on that legal processing history have been transferred or retained (if applicable); and

(F) Any other information deemed necessary by the Regional Administrator.

(iii) *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 a designated representative, then explicit authorization signed by the applicant must accompany the application.

(5) *Application evaluation.* The Regional Administrator will evaluate applications received as specified in paragraph (e)(3) of this section and compare all claims in an application with the information in the official Rockfish Program record. Application claims that are consistent with information in the official Rockfish Program record will be approved by the Regional Administrator. Application claims that are inconsistent with official Rockfish Program record, unless verified by documentation, will not be approved. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (e)(4) of this section, will be provided a single 30-day evidentiary period 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 Rockfish Program record. An applicant who submits claims that are inconsistent with information in the official Rockfish Program record has the burden of proving that the submitted claims are correct. Any claims that remain inconsistent or that are not accepted after the 30-day evidentiary period will be denied, and the applicant will be notified by an initial administrative determination (IAD) of his or her appeal rights under § 679.43.

(6) *Appeals.* If an applicant is notified by an IAD that claims made by the applicant have been denied, that applicant may appeal that IAD under the provisions at § 679.43.

(f) *Rockfish QS allocation*—(1) *General.* An eligible rockfish harvester who holds an LLP license at the time of application to participate in the Rockfish Pilot Program will receive rockfish QS assigned to that LLP license

based on the legal rockfish landings assigned to that LLP license according to the official Rockfish Program record.

(2) *Non-severability of rockfish QS from an LLP license.* Rockfish QS assigned to an LLP license is non-severable from that LLP license.

(3) *Calculation of rockfish QS.* (i) Based on the official Rockfish Program record, the Regional Administrator shall determine the total amount of legal rockfish landings of each primary rockfish species in each year during the fishery seasons established in Table 28 to this part.

(ii) For each sector, Rockfish QS for each primary rockfish species shall be based on the percentage of the legal rockfish landings of each primary rockfish species in that sector associated with each fully transferrable LLP licenses held by eligible rockfish harvesters in that sector.

(iii) The Regional Administrator shall calculate rockfish QS for each sector for each primary rockfish species ''s'' based on each fully transferable LLP license ''l'' held by all eligible rockfish harvesters by the following procedure:

(A) Sum the legal rockfish landings for each year during the fishery seasons established in Table 28 to this part.

(B) Select the five years that yield the highest tonnage of that primary rockfish species, including zero pounds if necessary.

(C) Sum the tonnage of the highest five years, for that species for that LLP license as selected under paragraph (f)(3)(iii)(B) of this section. This yields the Highest Five Years.

(D) Divide the Highest Five Years in paragraph (f)(3)(iii)(C) of this section for an LLP license and species by the sum of all Highest Five Years based on the official Rockfish Program record for that species as presented in the following equation:

Highest Five Years_{ls} / Σ All Highest Five Years_{s} = Percentage of the Total_{ls}

The result (quotient) of this equation is the Percentage of the Total_{ls}.

(E) Multiply the Percentage of the Total_{ls} by the Initial Rockfish QS Pool for each relevant species as established in Table 29 to this part. This yields the number of rockfish QS units for that LLP license for that primary rockfish species in rockfish QS units.

(F) Determine the percentage of legal rockfish landings from the official Rockfish Program record in the qualifying years used to calculate the rockfish QS assigned to the catcher/processor sector and multiply the rockfish QS units calculated in paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher/processor sector for that LLP license and species. For each primary rockfish species, the total amount of rockfish QS units assigned to the catcher/processor sector are the sum of all catch history allocation units assigned to all eligible rockfish harvesters in the catcher/processor sector.

(G) Determine the percentage of legal rockfish landings from the official Rockfish Program record in the qualifying years used to calculate rockfish QS assigned to the catcher vessel sector and multiply the Rockfish QS units calculated in paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher vessel sector for that LLP license and species. For each primary rockfish species, the total amount of rockfish QS units assigned to the catcher vessel sector is equal to the sum of all rockfish QS units assigned to all eligible rockfish harvesters in the catcher vessel sector.

§ 679.81 Rockfish Program annual harvester and processor privileges.

(a) *Sector and LLP license allocations of primary rockfish species*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of primary rockfish species that will be assigned to the Rockfish Program. For participants in a rockfish cooperative, rockfish limited access fishery, or opt–out fishery, amounts will be allocated to the appropriate sector, either the catcher/processor sector or the catcher vessel sector. The tonnage of fish assigned to a sector will be further assigned to rockfish cooperative(s) or the rockfish limited access fishery within that sector.

(2) *Calculation.* The amount of primary rockfish species allocated to the Rockfish Program is calculated by deducting the incidental catch allowance (ICA) the Regional Administrator determines is required on an annual basis in other non-target fisheries from the TAC. Ninety-five (95) percent of the remaining TAC for that primary rockfish species (TAC_s) is assigned for use by rockfish cooperatives and the rockfish limited access fishery in the catcher vessel and catcher/processor sectors. Five (5) percent of the remaining TAC is allocated for use in the rockfish entry level fishery. The formulae are as follows in paragraphs (g)(2)(i) and (ii) of this section:

(i) (TAC - ICA) x 0.95 = TAC_s.

(ii) (TAC - ICA) x 0.05 = TAC for the Rockfish Entry Level Fishery.

(3) *Primary rockfish species TACs assigned to the catcher/processor and catcher vessel sector.* TAC_s assigned for a primary rockfish species will be divided between the catcher/processor sector and the catcher vessel sector. Each sector will receive a percentage of TAC_s for each primary rockfish species equal to the sum of the rockfish QS units assigned to all LLP licenses that receive rockfish QS in that sector divided by the rockfish QS pool for that primary rockfish species. Expressed algebraically for each primary rockfish species ''s'' in paragraphs (g)(3)(i) and (ii) of this section:

(i) Catcher/Processor Sector TAC_s = [(TAC_s) x (Rockfish QS Units in the Catcher/Processor Sector_s/Rockfish QS Pool_s)].

(ii) Catcher Vessel Sector TAC_s = [(TAC_s) x (Rockfish QS Units in the Catcher Vessel Sector_s/Rockfish QS Pool_s)].

(4) *Use of primary rockfish species by an eligible rockfish harvester.* Once a TAC_s is assigned to a sector, the use of that TAC_s by eligible rockfish harvesters in that sector is governed by regulations applicable to the rockfish cooperative, limited access fishery, or opt–out fishery in which those eligible rockfish harvesters are participating. The TAC_s is assigned as follows:

(i) Any TAC_s assigned to a rockfish cooperative is issued as CQ and may be harvested only by the members of the rockfish cooperative that has been assigned that CQ and only on vessels that are authorized to fish under that CQ permit. Once issued, CQ may be transferred between rockfish cooperatives according to the provisions in paragraph (f) of this section.

(ii) Any TAC_s assigned to the rockfish limited access fishery in the catcher vessel sector may be harvested by any eligible rockfish harvester who has assigned an LLP license with rockfish QS for use in the rockfish limited access fishery in the catcher vessel sector.

(iii) Any TAC_s assigned to the rockfish limited access fishery in the catcher/processor sector may be harvested by any eligible rockfish harvester who has assigned an LLP license with rockfish QS for use in the rockfish limited access fishery in the catcher/processor sector.

(iv) TAC_s is not assigned to an opt–out fishery. Any TAC_s that would have been derived from rockfish QS assigned to the opt–out fishery is reassigned to rockfish cooperatives and the rockfish limited access fishery in the catcher/processor sector as established in paragraph (a)(5)(ii) of this section.

(5) *Determining the TACs of primary rockfish species.* TAC_s is assigned to each rockfish cooperative or limited access fishery based on the rockfish QS assigned to that fishery in each sector according to the following procedures:

(i) *Catcher vessel sector.* The assignment of TAC_s to a rockfish cooperative or limited access fishery is governed by the Rockfish Program fishery to which an LLP license is assigned under this paragraph (a).

(A) *Rockfish cooperative.* The amount of TAC_s for each primary rockfish species assigned to a rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the total rockfish QS pool in the catcher vessel sector multiplied by the catcher vessel TAC_s. Once TAC_s for a primary rockfish species is assigned to a rockfish cooperative, it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

CQ = [(Catcher Vessel Sector TAC_s) x (Rockfish QS assigned to that Cooperative/ Rockfish QS Units in the Catcher Vessel $Sector_s$)].

(B) *Rockfish limited access fishery.* The amount of TAC_s for each primary rockfish species assigned to the rockfish limited access fishery is equal to the catcher vessel sector TAC_s subtracting all CQ issued to rockfish cooperatives in the catcher vessel sector for that primary rockfish species. Expressed algebraically in the following equation:

Catcher Vessel Sector Rockfish Limited Access Fishery TAC_s = Catcher Vessel Sector TAC_s − (**Σ** CQ issued to Rockfish Cooperatives in the Catcher Vessel Sector).

(ii) *Catcher/processor sector.* The assignment of TAC_s to a rockfish cooperative or limited access fishery is determined by the Rockfish Program fishery to which an LLP license is assigned under this paragraph (a).

(A) *Rockfish cooperative.* The amount of TAC_s for each primary rockfish species assigned to a rockfish cooperative is equal to the amount of rockfish QS units assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives and the limited access fishery in the catcher/processor sector multiplied by the catcher/ processor TAC_s. Once TAC_s for a primary rockfish species is assigned to a rockfish cooperative it is issued as CQ specific to that rockfish cooperative. The amount of CQ for each primary rockfish species that is assigned to a rockfish cooperative is expressed algebraically as follows:

CQ = [(Catcher/Processor Sector TAC_s) x (Rockfish QS Units assigned to that Cooperative / **Σ** Rockfish QS Units assigned to all rockfish cooperatives and the Limited Access Fishery in the Catcher/Processor Sector).

(B) *Rockfish limited access fishery.* The amount of TAC_s for each primary rockfish species assigned to the limited access fishery is equal to the catcher/ processor TAC_s subtracting all CQ issued to rockfish cooperatives in the catcher/processor sector for that primary rockfish species. Expressed algebraically in the following equation:

Catcher/Processor Sector Rockfish Limited Access Fishery TAC_s = [(Catcher/Processor Sector TAC_s) − (**Σ** CQ issued to rockfish cooperatives in the Catcher/Processor Sector).

(b) *Sector and LLP license allocations of secondary species*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of secondary species that may be assigned to the Rockfish Program. This amount will be assigned to the catcher/processor sector and the catcher vessel sector. The tonnage of fish assigned to a sector will be assigned only to rockfish cooperatives within that sector. CQ of secondary species is subject to the use limitations established in paragraph (b)(4) of this section.

(2) *Maximum amount of secondary species tonnage that may be assigned to the catcher/processor sector.* (i) Sum the amount of each secondary species retained by all vessels that gave rise to an LLP license with a catcher/processor designation or that fished under an LLP license with a catcher/processor designation during the directed fishery for any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish during all qualifying season dates established in Table 28 to this part. This is the rockfish catcher/processor sector harvest for that secondary species.

(ii) Sum the amount of each secondary species retained by all vessels in the Central GOA regulatory Area and adjacent waters open by the State of Alaska for which it adopted a Federal fishing season from January 1, 1996, until December 31, 2002. This is the total secondary species harvest.

(iii) For each secondary species, divide the rockfish catcher/processor sector harvest by the total secondary species harvest and multiply by 100. This is the percentage of secondary species that may be assigned to the catcher/processor sector in the Rockfish Program fishery.

(iv) Multiply the percentage of each secondary species assigned to the catcher/processor sector in the Rockfish Program fishery by the TAC for that secondary species. This is the maximum amount of that secondary species that may be allocated to the catcher/ processor sector in the Rockfish Program.

(v) The maximum amount of rougheye rockfish that may be allocated to the catcher/processor sector is equal to 58.87 percent of the TAC for the Central GOA.

(vi) The maximum amount of shortraker rockfish that may be allocated to the catcher/processor sector is equal to 30.03 percent of the TAC for the Central GOA.

(3) *Maximum amount of secondary species tonnage that may be assigned to the catcher vessel sector.* (i) Sum the amount of each secondary species retained by all vessels that gave rise to an LLP license with a catcher vessel designation or that fished under an LLP license with a catcher vessel designation during the directed fishery for any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish during all qualifying season dates established in Table 28 to this part. This is the rockfish catcher vessel sector harvest for that secondary species.

(ii) Sum the amount of each secondary species retained by all vessels in the Central GOA regulatory Area and adjacent waters open by the State of Alaska for which it adopted a Federal fishing season from January 1, 1996, until December 31, 2002. This is the total secondary species harvest.

(iii) For each secondary species, divide the rockfish catcher vessel sector harvest by the total secondary species harvest and multiply by 100. This is the percentage of each secondary species that may be assigned to the catcher vessel sector in the Rockfish Program fishery.

(iv) Multiply the percentage of each secondary species assigned to the catcher vessel sector in the Rockfish Program fishery by the TAC for that secondary species. This is the maximum amount of that secondary species that may be allocated to the catcher vessel sector in the Rockfish Program.

(4) *Use of a secondary species by an eligible rockfish harvester.* Once the maximum amount of secondary species that may be assigned to a sector has been determined, the use of that specific amount that is assigned to that sector is governed by regulations applicable to the specific Rockfish Program fishery in which eligible rockfish harvesters are

participating. The specific amount of each secondary species that may be used by eligible rockfish harvesters is determined by the following procedure:

(i) Secondary species may only be assigned to a rockfish cooperative. Once a secondary species is assigned to a rockfish cooperative it is issued as CQ, which may only be used by the rockfish cooperative to which it is assigned.

(ii) Secondary species are not assigned to a rockfish limited access fishery or the opt–out fishery and there is not a dedicated harvestable allocation for any specific participant in these rockfish fisheries.

(5) *Determining the amount of secondary species CQ assigned to a rockfish cooperative.* The amount of CQ for each secondary species that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) *CQ assigned to rockfish cooperatives in the catcher/processor sector.* The CQ for a secondary species that is assigned to a rockfish cooperative is equal to the maximum amount of that secondary species that may be allocated to the catcher/processor sector in the Rockfish Program multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives and the limited access fishery for all primary rockfish species in the catcher/processor sector. Expressed algebraically in the following equation:

CQ for that Secondary Species = maximum amount of that Secondary Species that may be allocated to the Catcher/Processor Sector in the Rockfish Program x (**Σ** Rockfish QS Units assigned to that Rockfish cooperative / **Σ** Rockfish QS Units assigned to all rockfish cooperatives and the Limited Access Fishery in the Catcher/Processor Sector).

(ii) *CQ assigned to rockfish cooperatives in the catcher vessel sector.* The CQ for a secondary species that is assigned to a specific rockfish cooperative is equal to the maximum amount of that secondary species that may be allocated to the catcher vessel sector in the Rockfish Program multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher vessel sector. Expressed algebraically in the following equation:

CQ for that Secondary Species = maximum amount of that Secondary Species that may be allocated to the Catcher Vessel Sector in the Rockfish Program x (**Σ** Rockfish QS Units assigned to that Rockfish Cooperative / Rockfish QS Pool in the Catcher Vessel Sector).

(c) *Sector and LLP license allocations of rockfish halibut PSC*—(1) *General.* Each calendar year, the Regional Administrator will determine the tonnage of rockfish halibut PSC that will be assigned to the Rockfish Program. This amount will be allocated to the appropriate sector, either the catcher/processor sector or the catcher vessel sector. The tonnage of rockfish halibut PSC assigned to a sector will be further assigned as CQ only to rockfish cooperative(s) within that sector.

(2) *Maximum amount of rockfish halibut PSC that may be assigned to the catcher/processor and catcher vessel sectors.* (i) Sum the amount of halibut PSC used by all vessels that gave rise to an LLP license or that fished under an LLP license used during the directed fishery for any primary rockfish species in which the sum of the catch of all primary rockfish species for that legal rockfish landing exceeded the catch of all other groundfish during all qualifying season dates established in Table 28 to this part. This is the rockfish halibut PSC amount.

(ii) Sum the amount of halibut PSC by all vessels in the GOA Regulatory Area and adjacent waters open by the State of Alaska for which it adopted a Federal fishing season from January 1, 1996, until December 31, 2002. This is the Total Halibut PSC.

(iii) Divide the rockfish halibut PSC amount by the total halibut PSC and multiply by 100. This is the percentage of rockfish halibut PSC assigned to the Rockfish Program fishery.

(iv) Multiply the percentage of rockfish halibut PSC assigned to the Rockfish Program fishery by the GOA halibut PSC limit. This is the maximum amount of rockfish halibut PSC that may be allocated to the Rockfish Program fishery.

(v) Multiply the maximum amount of rockfish halibut PSC that may be allocated to the Rockfish Program fishery by the percentage of the aggregate Rockfish QS assigned to the catcher/processor sector. This is the maximum amount of rockfish halibut PSC that may be allocated to the catcher/processor sector.

(vi) Multiply the maximum amount of rockfish halibut PSC that may be allocated to the Rockfish Program fishery by the percentage of the aggregate Rockfish QS assigned to the catcher vessel sector. This is the maximum amount of rockfish halibut PSC that may be allocated to the catcher vessel sector.

(3) *Use of rockfish halibut PSC by an eligible rockfish harvester.* Once the maximum amount of rockfish halibut PSC that may be assigned to a sector has been determined, the use of that specific amount that is assigned to that sector is governed by the specific Rockfish Program fishery in which eligible rockfish harvesters are participating.

(i) *Rockfish halibut PSC is assigned only to a rockfish cooperative.* Once rockfish halibut PSC is assigned to a rockfish cooperative, it is issued as CQ, which may only be used by the members of the rockfish cooperative to which it is assigned.

(ii) Rockfish halibut PSC is not assigned to a rockfish limited access fishery or the opt–out fishery and there is not a dedicated allocation for any specific participant in these rockfish fisheries.

(4) *Determining the amount of rockfish halibut PSC CQ assigned to a rockfish cooperative.* The amount of CQ of rockfish halibut PSC that is assigned to each rockfish cooperative is determined according to the following procedures:

(i) *CQ assigned to rockfish cooperatives in the catcher/processor sector.* The CQ for rockfish halibut PSC that is assigned to a specific rockfish cooperative is equal to the maximum amount of rockfish halibut PSC that may be allocated to the catcher/processor sector multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the sum of the rockfish QS units assigned to rockfish cooperatives and the limited access fishery for all primary rockfish species in the catcher/processor sector. This is expressed algebraically in the following equation:

CQ for Rockfish Halibut PSC to a specific rockfish cooperative = maximum amount of Rockfish Halibut PSC that may be allocated to the Catcher/Processor Sector x (**Σ** Rockfish QS Units assigned to that Rockfish Cooperative / **Σ** Rockfish QS Units assigned to all rockfish cooperatives and the Limited Access Fishery in the Catcher/Processor Sector).

(ii) *CQ assigned to rockfish cooperatives in the catcher vessel sector.* The CQ for rockfish halibut PSC that is assigned to a specific rockfish cooperative is equal to the maximum amount of rockfish halibut PSC that may be allocated to the catcher vessel sector multiplied by the sum of the rockfish QS units for all primary rockfish species assigned to that rockfish cooperative divided by the rockfish QS pool for all primary rockfish species in the catcher

vessel sector. This is expressed algebraically in the following equation:

CQ for Rockfish Halibut PSC to a specific rockfish cooperative = maximum amount of Rockfish Halibut PSC that may be allocated to the Catcher Vessel Sector x (**Σ** Rockfish QS Units assigned to that Rockfish Cooperative/ Rockfish QS Pool in the Catcher Vessel Sector).

(d) *Assigning rockfish QS to a Rockfish Program fishery*—(1) *General.* Each calendar year, a person that is participating in the Rockfish Program must assign any LLP license and any rockfish QS assigned to that LLP license to a Rockfish Program fishery by the process specified in paragraph (e) of this section. A person may assign an LLP license and any rockfish QS assigned to that LLP license to only one Rockfish Program fishery in a fishing year. Any rockfish QS assigned to a person's LLP license after NMFS has issued CQ or the TAC for that calendar year will not result in any additional CQ or TAC being issued for that rockfish QS for that calendar year.

(2) *Rockfish cooperatives in the catcher vessel sector.* An eligible rockfish harvester may assign rockfish QS to a rockfish cooperative in the catcher vessel sector if:

(i) That eligible rockfish harvester assigns the rockfish QS associated with that LLP license to a rockfish cooperative on a complete application for CQ that is approved by the Regional Administrator and that meets the requirements of paragraph (i) of this section; and

(ii) That rockfish QS is derived from legal rockfish landings assigned to the catcher vessel sector.

(3) *Rockfish cooperative in the catcher/processor sector.* An eligible rockfish harvester may assign rockfish QS to a rockfish cooperative in the catcher/processor sector if:

(i) That eligible rockfish harvester assigns the rockfish QS associated with that LLP license to a rockfish cooperative on a complete application for CQ that is approved by the Regional Administrator and that meets the requirements of paragraph (i) of this section; and

(ii) That rockfish QS is derived from legal rockfish landings assigned to the catcher/processor sector.

(4) *Rockfish limited access fishery.* (i) An eligible rockfish harvester may assign rockfish QS to a rockfish limited access fishery if that eligible rockfish harvester:

(A) Assigns the rockfish QS associated with that LLP license to a limited access fishery on a complete application for the rockfish limited access fishery that is approved by the Regional Administrator; or

(B) Does not submit a complete application for CQ, or an application for the opt–out fishery that is approved.

(ii) The rockfish QS is assigned to the rockfish limited access fishery in the catcher vessel sector if that rockfish QS is assigned to the catcher vessel sector.

(iii) The rockfish QS is assigned to the rockfish limited access fishery in the catcher/processor sector if that rockfish QS is assigned to the catcher/processor sector.

(5) *Opt–out fishery.* An eligible rockfish harvester may assign rockfish QS assigned to the catcher/processor sector to the opt–out fishery if that eligible rockfish harvester assigns the rockfish QS associated with that LLP license to the opt–out fishery on a complete application for the opt–out fishery that is approved by the Regional Administrator.

(6) *Rockfish entry level fishery.* (i) A rockfish entry level harvester may assign an LLP license to the rockfish entry level fishery if that rockfish entry level harvester assigns that LLP license to the rockfish entry level fishery on a complete application for the entry level fishery that is approved by the Regional Administrator.

(ii) A rockfish entry level processor may participate in the rockfish entry level fishery if that rockfish entry level processor submits a complete application for the entry level fishery that is approved by the Regional Administrator.

(e) *Applications for a Rockfish Program fishery*—(1) *General.* Applications to participate in a Rockfish Program fishery are required to be submitted each year. A person who wishes to participate in a particular Rockfish Program fishery must submit a timely and complete application that is appropriate to that Rockfish Program fishery. These applications may only be submitted to NMFS using the following methods:

(i) Mail: Regional Administrator, c/o Restricted Access Management Program, NMFS, P.O. Box 21668, Juneau, AK 99802–1668;

(ii) Fax: 907–586–7354; or

(iii) Hand Delivery or Carrier: NMFS, Room 713, 709 West 9th Street, Juneau, AK 99801.

(2) *Forms.* Forms are available through the internet on the NMFS Alaska Region website at *http://www.fakr.noaa.gov*, or by contacting NMFS at: 800–304–4846, Option 2.

(3) *Deadline.* A completed application must be received by NMFS no later than 1700 hours A.l.t. on March1 of the year for which the applicant wishes to participate in a Rockfish Program fishery, or if sent by U.S. mail, the application must be postmarked by that time.

(4) *Application for CQ.* A rockfish cooperative that submits a complete application that is approved by NMFS will receive a CQ permit that establishes an annual amount of primary rockfish species, secondary species, and rockfish halibut PSC that is based on the collective rockfish QS of the LLP licenses assigned to the rockfish cooperative by its members. A CQ permit will list the amount of CQ, by fishery, held by the rockfish cooperative, the members of the rockfish cooperative and LLP licenses assigned to that rockfish cooperative, and the vessels which are authorized to harvest fish under that CQ permit.

(i) *Contents of an application for CQ.* A completed application must contain the following information:

(A) *Rockfish cooperative identification.* The rockfish cooperative's legal name; the type of business entity under which the rockfish cooperative is organized; the state in which the rockfish cooperative is legally registered as a business entity; Tax ID number, date of incorporation, the printed name of the rockfish cooperative's designated representative; the permanent business address, telephone number, fax number, and e-mail address (if available) of the rockfish cooperative or its designated representative; and the signature of the rockfish cooperative's designated representative and date signed.

(B) *Members of the rockfish cooperative*—(*1*) *Harvester identification.* Full name, NMFS Person ID, LLP license number(s), Tax ID or SSN, name of the vessel(s), ADF&G vessel registration number, and USCG documentation number of vessel(s) on which the CQ issued to the rockfish cooperative will be used.

(*2*) *LLP holdership documentation.* Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license(s) assigned to the rockfish cooperative and the percentage ownership each person and individual holds in the LLP license(s).

(C) *Processor associates of the rockfish cooperative*—(*1*) *Identification.* Full name, NMFS Person ID, Tax ID, facility name, ADF&G processor code, SFP vessel name, ADF&G vessel registration number, and USCG documentation number of vessel (if a vessel), and Federal Processor Permit for each processing facility or vessel.

(*2*) *Processor ownership documentation.* Provide the names of all

persons, to the individual person level, holding an ownership interest in the processor and the percentage ownership each person and individual holds in the processor.

(D) *Additional documentation.* For the cooperative application to be considered complete, the following documents must be attached to the application:

(*1*) A copy of the business license issued by the state in which the rockfish cooperative is registered as a business entity;

(*2*) A copy of the articles of incorporation or partnership agreement of the rockfish cooperative;

(*3*) A copy of the rockfish cooperative agreement signed by the members of the rockfish cooperative (if different from the articles of incorporation or partnership agreement of the rockfish cooperative) that includes terms that specify that:

(*i*) Eligible rockfish processor affiliated harvesters cannot participate in price setting negotiations except as permitted by general antitrust law; and

(*ii*) The rockfish cooperative must establish a monitoring program sufficient to ensure compliance with the Rockfish Program; and

(E) *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 designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) *Issuance of CQ.* Issuance by NMFS of a CQ permit is not a determination that the rockfish cooperative is formed or is operating in compliance with antitrust law.

(5) *Application for the rockfish limited access fishery.* An eligible rockfish harvester who wishes to participate in the rockfish limited access fishery for a calendar year must submit an application for the rockfish limited access fishery.

(i) *Contents of application for the rockfish limited access fishery.* A completed application must contain the following information:

(A) *Applicant identification.* The applicant's name, NMFS person ID (if applicable), tax ID or social security number, date of birth or date of incorporation, permanent business mailing address, business telephone number, fax number, and e-mail (if available);

(B) Indicate (YES or NO) whether the applicant is an eligible rockfish harvester;

(C) Indicate (YES or NO) whether the applicant is participating in the rockfish limited access fishery;

(D) *Vessel identification.* The name of the vessel, ADF&G vessel registration number, USCG documentation number, and LLP license number(s) held by the applicant and used on that vessel in this rockfish limited access fishery;

(E) *LLP holdership documentation.* Provide the names of all persons, to the individual person level, holding an ownership interest in the LLP license assigned to the rockfish limited access fishery and the percentage ownership each person and individual holds in the LLP license; and

(F) *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 designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(6) *Application to opt–out.* An eligible rockfish harvester who wishes to opt–out of the Rockfish Program for a calendar year with an LLP license assigned rockfish QS in the catcher/processor sector must submit an application to opt–out.

(i) *Contents of application to opt–out.* A completed application must contain the following information:

(A) *Applicant identification.* The applicant's name, NMFS person ID (if applicable), tax ID or social security number, date of birth or date of incorporation, permanent business mailing address, business telephone number, fax number, and e-mail (if available);

(B) Indicate (YES or NO) whether the applicant is an eligible rockfish harvester;

(C) Indicate (YES or NO) whether the applicant is opting-out of the Rockfish Program;

(D) Indicate (YES or NO) whether the applicant holds an LLP license with rockfish QS assigned to the catcher/processor sector;

(E) *Vessel identification.* The name of the vessel, ADF&G vessel registration number, USCG documentation number, and LLP license number(s) held by the applicant and used on that vessel;

(F) *LLP holdership documentation.* Provide the names of all persons, to the individual level, holding an ownership interest in the LLP license and the percentage ownership each person and individual holds in the LLP license; and

(G) *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 designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(7) *Application for the rockifsh entry level fishery.* A rockfish entry level harvester who wishes to participate in the rockfish entry level fishery must submit an application for the rockifsh entry level fishery.

(i) Contents of application for the entry level fishery. A completed application must contain the following information:

(A) The applicant's name, NMFS person ID (if applicable), tax ID or social security number (required), permanent business mailing address, and business telephone number, fax number, and e-mail address (if available);

(B) Indicate (YES or NO) whether applicant is a U.S. citizen, U.S. corporation, partnership; association, or other business entity; if YES, enter the date of birth or date of incorporation;

(C) For harvesters who are applying to participate in the entry level fishery, enter the name, ADF&G vessel registration number, and USCG documentation number of the vessel to be used in the entry level fishery, and LLP license number(s) held by the applicant and used on that vessel in the rockfish entry level fishery;

(D) Harvesters who are applying to participate in the entry level fishery must attach a statement from an eligible entry level processor that affirms that the harvester has a market for any rockfish delivered by that harvester in the entry level fishery; and

(E) 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 designated representative, then explicit authorization signed by the applicant must accompany the application.

(ii) [Reserved]

(f) *Transfer applications.* A rockfish cooperative may transfer all or part of its CQ to another rockfish cooperative. This transfer requires the submission of an application for inter-cooperative transfer to NMFS.

(1) *Application for inter-cooperative transfer.* NMFS will notify the transferor and transferee once the application has been received and approved. A transfer of CQ is not effective until approved by NMFS. A completed transfer of CQ issued to a rockfish cooperative requires that the following information be provided to NMFS in the application for inter-cooperative transfer:

(i) *Identification of transferor.* Enter the name of the rockfish cooperative; NMFS Person ID; name of the rockfish cooperative's designated representative; permanent business mailing address; and business telephone number, fax number, and e-mail address (if available) of the rockfish cooperative designated representative. A temporary mailing address for each transaction may also be provided.

(ii) *Identification of transferee.* Enter the name of the rockfish cooperative; NMFS Person ID(s); name of rockfish cooperative's designated representative; permanent business mailing address; and business telephone number, fax number, and e-mail address (if available) of the rockfish cooperative designated representative. A temporary mailing address for each transaction may also be provided.

(iii) *Identification of rockfish cooperative member.* Enter the name and NMFS Person ID of the member(s) to whose use cap the rockfish cooperative CQ will be applied, and the amount of CQ applied to each member for purposes of applying use caps established under the Rockfish Program under § 679.82(a).

(iv) *CQ to be transferred.* Identify the type and amount of Primary species, secondary species, or rockfish halibut PSC CQ to be transferred.

(v) *Certification of transferor.* The rockfish cooperative transferor's designated representative and the eligible rockfish processor with whom that rockfish cooperative in the catcher vessel sector is associated 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. Also enter the printed name of the rockfish cooperative transferor's designated representative. Explicit authorization for the designated representative to act on behalf of the rockfish cooperatives must accompany the application.

(vi) Certification of transferee. The rockfish cooperative transferee's designated representative and the eligible rockfish processor with whom that rockfish cooperative in the catcher vessel sector is associated 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. Also enter the printed name of the rockfish cooperative transferee's designated representative. Explicit authorization for the designated representative to act on behalf of the rockfish cooperatives must accompany the application.

(2) [Reserved]

(g) *Transfer of processor eligibility.* A person may not transfer eligibility to receive and process under the Rockfish Program to another person except:

(1) As provided for under § 679.80(c)(2)(ii); or

(2) If an eligible rockfish processor transfers complete ownership of a stationary floating processor or shoreside processing facility and all processing history associated with that stationary floating processor or shoreside processing facility to another person.

(3) *Limitation on use of processor eligibility.* Any person becoming an eligible rockfish processor by transfer may not receive fish harvested under the Rockfish Program outside of the community listed by the original recipient of the processor eligibility in the application to participate in the Rockfish Program under § 679.80(e)(4)(ii)(C).

(4) *Non-severability of processor eligibility.* An eligible rockfish processor permit may not be divided or suballocated.

(h) *Maximum retainable amount (MRA) limits*—(1) *Rockfish cooperative.* A vessel assigned to a rockfish cooperative and fishing under a CQ permit may harvest groundfish species not allocated as CQ up to the amounts of the MRAs for those species as established in Table 30 to this part.

(2) *Catcher/processor sector rockfish limited access fishery.* An eligible rockfish harvester in the catcher/processor rockfish limited access fishery may harvest groundfish species other than primary rockfish species up to the amounts of the MRAs for those species as established in Table 30 to this part.

(3) *Catcher vessel sector rockfish limited access fishery.* An eligible rockfish harvester in the catcher vessel rockfish limited access fishery may harvest groundfish species other than primary rockfish species up to the amounts of the MRAs for those species as established in Table 30 to this part.

(4) *Opt–out fishery.* An eligible rockfish harvester in the opt–out fishery may harvest groundfish species other than primary rockfish species up to the amounts of the MRAs for those species as established in Table 10 to this part.

(5) *Rockfish entry level fishery.* An rockfish entry level harvester in the rockfish entry level fishery may harvest groundfish species other than primary rockfish species up to amounts of the MRAs for those species as established in Table 10 to this part.

(6) *Maximum retainable amounts (MRA).* (i) The MRA for an incidental catch species for vessels participating in a rockfish cooperative, or a rockfish limited access fishery, is calculated as a proportion of the total allocated primary rockfish species on board the vessel in round weight equivalents using the retainable percentage in Table 30 to this part; except that:

(ii) In the catcher vessel sector, shortraker and rougheye rockfish are incidental catch species and are limited to an aggregate MRA of 2.0 percent of the retained weight of all primary rockfish species during that fishing trip.

(iii) Once the amount of shortraker rockfish harvested in the catcher vessel sector is equal to 9.72 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained by any participant in the catcher vessel sector.

(iv) In the rockfish limited access fishery for the catcher/processor sector, shortraker and rougheye rockfish are incidental catch species and are limited to an aggregate MRA of 2.0 percent of the retained weight of all primary rockfish species during that fishing trip.

(v) Once the amount of shortraker rockfish harvested in the catcher/processor sector is equal to 30.03 percent of the shortraker rockfish TAC in the Central GOA regulatory area, then shortraker rockfish may not be retained in the rockfish limited access fishery in the catcher/processor sector.

(vi) Once the amount of rougheye rockfish harvested in the catcher/processor sector is equal to 58.87 percent of the rougheye rockfish TAC in the Central GOA regulatory area, then rougheye rockfish may not be retained in the rockfish limited access fishery in the catcher/processor sector.

(i) *Rockfish cooperative*—(1) *General.* This section governs the formation and operation of rockfish cooperatives. The regulations in this section apply only to rockfish cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. Members of rockfish cooperatives should consult legal counsel before commencing any activity if the members are uncertain about the legality under the antitrust laws of the rockfish cooperative's proposed conduct. Membership in a rockfish cooperative is voluntary. No person may be required to join a rockfish

cooperative. Upon receipt of written notification that a person is eligible and wants to join a rockfish cooperative, that rockfish cooperative must allow that person to join subject to the terms and agreements that apply to the members of the cooperative as established in the contract governing the conduct of the rockfish cooperative. Members may leave a rockfish cooperative, but any CQ contributed by the rockfish QS held by that member remains assigned to that rockfish cooperative for the remainder of the calendar year. An LLP license or vessel that has been assigned to a rockfish cooperative in the catcher/processor sector that leaves a rockfish cooperative continues to be subject to the sideboard limits established for that rockfish cooperative under § 679.82(d) and (f), for that calendar year. If a person becomes the holder of an LLP license that has been assigned to a rockfish cooperative, then that person may join that rockfish cooperative upon receipt of that LLP license.

(2) *Legal and organizational requirements.* A rockfish cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each rockfish 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) Each rockfish cooperative must appoint an individual as designated representative to act on the rockfish cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the rockfish cooperative. The designated representative must be an individual, and may be a member of the rockfish cooperative, or some other individual designated by the rockfish cooperative;

(iii) Each rockfish cooperative must submit a complete and timely application for CQ;

(iv) Each rockfish cooperative must meet the mandatory requirements established in paragraphs (i)(3) and (4) of this section applicable to that rockfish cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form a rockfish cooperative in the catcher vessel or catcher/processor sector.

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(i) Who may join a rockfish cooperative?	Only persons who are eligible rockfish harvesters may join a rockfish cooperative. Persons who are not eligible rockfish harvesters may be employed by, or serve as the designated representative of a rockfish cooperative, but are not members of the rockfish cooperative.	
(ii) What is the minimum number of LLP licenses that must be assigned to form a rockfish cooperative?	No minimum requirement.	2 LLP licenses assigned rockfish QS in the catcher/processor sector. These licenses can be held by one or more persons.
(iii) Is an association with an eligible rockfish processor required?	Yes. An eligible rockfish harvester may only be a member of a rockfish cooperative formed in association with an eligible rockfish processor to which the harvester made the plurality of legal rockfish landings assigned to the LLP license(s) during the applicable processor qualifying period chosen by an eligible rockfish processor in the application to participate in the Rockfish Program.	No
(iv) What if an eligible rockfish harvester did not deliver any legal rockfish landings assigned to an LLP license to an eligible rockfish processor during a processor qualifying period?	That eligible rockfish harvester can assign that LLP license to any rockfish cooperative.	N/A
(v) What is the processor qualifying period?	The processor qualifying period is the four of five years from 1996 through 2000 that are used to establish the legal rockfish landings that are considered for purposes of establishing an association with an eligible rockfish processor. Each eligible rockfish processor will select a processor qualifying period in the application to participate in the Rockfish Program. An eligible rockfish harvester that has acquired the processing history of a shoreside processor or stationary floating processor under the provisions of § 679.80(c)(2)(ii) must select only one processor qualifying period that is applicable to the aggregated processing history held by that eligible rockfish processor. The processor qualifying period may not be changed once selected for that eligible rockfish processor, including upon transfer of processor eligibility. The same processor qualifying period will be used for all LLP licenses to determine the legal rockfish landings that are considered for purposes of eligible rockfish harvesters establishing an association with an eligible rockfish processor.	N/A

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(vi) Is there a minimum amount of rockfish QS that must be assigned to a rockfish cooperative for it to be allowed to form?	Yes. A rockfish cooperative must be assigned rockfish QS that represents at least 75 percent of all the legal rockfish landings that yields Rockfish QS of primary rockfish species delivered to that eligible rockfish processor during the four years selected by that processor.	No
(vii) What is allocated to the rockfish cooperative?	CQ for primary rockfish species, secondary species, and rockfish halibut PSC, based on the rockfish QS assigned to all of the LLP licenses that are assigned to the cooperative.	
(viii) Is this CQ an exclusive harvest privilege?	Yes, the members of the rockfish cooperative have an exclusive harvest privilege to collectively catch this CQ, or a cooperative can transfer all or a portion of this CQ to another rockfish cooperative.	
(ix) Is there a season during which designated vessels must catch CQ?	Yes, any vessel designated to catch CQ for a rockfish cooperative is limited to catching CQ during the season beginning on 1200 hours, A.l.t. on May 1 through 1200 hours A.l.t. on November 15.	
(x) Can any vessel catch a rockfish cooperative's CQ?	No, only vessels that are named on the application for CQ for that rockfish cooperative can catch the CQ assigned to that rockfish cooperative. A vessel may be assigned to only one rockfish cooperative in a calendar year.	
(xi) Can the member of a rockfish cooperative transfer CQ individually without the approval of the other members of the rockfish cooperative?	No, only the rockfish cooperative's designated representative, and not individual members, may transfer its CQ to another rockfish cooperative, but only if that transfer is approved by NMFS as established under paragraph (i) of this section.	
(xii) Can a rockfish cooperative in the catcher/processor sector transfer its sideboard limit?	N/A	No, sideboard limits assigned to a rockfish cooperative in the catcher/processor sector is a limit applicable to a specific rockfish cooperative, and may not be transferred between rockfish cooperatives.
(xiii) Is there a hired master requirement?	No, there is no hired master requirement.	N/A
(xiv) Can an LLP license be assigned to more than one rockfish cooperative in a calendar year?	No. An LLP license can only be assigned to one rockfish cooperative in a calendar year. An eligible rockfish harvester holding multiple LLP licenses may assign different LLP licenses to different rockfish cooperatives subject to any other restrictions that may apply.	
(xv) Can an eligible rockfish processor be associated with more than one rockfish cooperative?	An eligible rockfish processor can only associate with one rockfish cooperative per year at each shoreside processor or stationary floating processor owned by that eligible rockfish processor. An eligible rockfish processor who holds more than one processing history based on a transfer of processing history under the provisions of § 679.80(c)(2)(ii) would be issued a single eligible rockfish processor permit that aggregates the processing history held by that eligible rockfish processor. That eligible rockfish processor may form an association with a rockfish cooperative with the eligible rockfish harvesters eligible to form a rockfish cooperative based on the aggregated processing history of that eligible rockfish processor and may receive rockfish delivered by that rockfish cooperative at a shoreside processor or stationary floating processor owned by that eligible rockfish processor subject to any other restrictions that may apply.	N/A
(xvi) Can an LLP license be assigned to a rockfish cooperative and the rockfish limited access fishery or opt-out fishery?	No. Once an LLP license is assigned to a rockfish cooperative, any rockfish QS assigned to that LLP license yields CQ for that rockfish cooperative for the calendar year. An LLP license may only be assigned to one Rockfish Program fishery in a calendar year.	
(xvii) Which members may harvest the rockfish cooperative's CQ?	That is determined by the rockfish cooperative contract signed by its members. Any violations of this contract by one cooperative member may be subject to civil claims by other members of the rockfish cooperative.	
(xviii) Does a rockfish cooperative need a contract?	Yes, a rockfish cooperative must have a membership agreement or contract that specifies how the rockfish cooperative intends to harvest its CQ. A copy of this agreement or contract must be submitted with the application for CQ.	

Requirement	Catcher Vessel Sector	Catcher/Processor Vessel Sector
(xix) What happens if the rockfish cooperative exceeds its CQ amount?	A rockfish cooperative is not authorized to catch fish in excess of its CQ. Exceeding a CQ is a violation of the regulations. Each member of the rockfish cooperative is jointly and severally liable for any violations of the Rockfish Program regulations while fishing under authority of a CQ permit. This liability extends to any persons who are hired to catch or receive CQ assigned to a rockfish cooperative. Each member of a rockfish cooperative is responsible for ensuring that all members of the rockfish cooperative comply with all regulations applicable to fishing under the Rockfish Program.	
(xx) Is there a limit on how much CQ a rockfish cooperative may hold or use?	Yes, generally, a rockfish cooperative may not hold or use more than 30 percent of the aggregate primary rockfish species CQ assigned to the catcher vessel sector for that calendar year. See § 679.82(a) for the provisions that apply.	No, but a catcher/processor vessel is still subject to any vessel use caps that may apply. See § 679.82(a) for the use cap provisions that apply.
(xxi) Is there a limit on how much CQ a vessel may harvest?	No. However, a vessel may not catch more CQ than the CQ assigned to that rockfish cooperative for which it is authorized to fish.	Yes, generally, no vessel may harvest more than 60 percent of the aggregate primary rockfish species TAC assigned to the catcher/processor sector for that calendar year, unless exempt from this restriction. See § 679.82(a) for the provisions that apply.
(xxii) If my vessel is fishing in a directed flatfish fishery in the Central GOA and I catch groundfish and halibut PSC, does that count against the rockfish cooperative's CQ?	(A) Any vessel authorized to harvest the CQ assigned to a rockfish cooperative must count any catch of primary rockfish species, secondary species, or rockfish halibut PSC against that rockfish cooperative's CQ from May 1 until November 15, or until the effective date of a rockfish cooperative termination of fishing declaration that has been approved by NMFS. (B) Groundfish harvests would not be debited against the rockfish cooperative's CQ if the vessel is not authorized to harvest CQ. In this case, any catch of halibut would be attributed to the halibut PSC limit for that directed target fishery and gear type.	
(xxiii) Can my rockfish cooperative negotiate prices for me?	The rockfish cooperatives formed under the Rockfish Program are intended to conduct and coordinate harvest activities for their members. Rockfish cooperatives formed under the Rockfish Program are subject to existing antitrust laws. Collective price negotiation by a rockfish cooperative must be conducted in accordance with existing antitrust laws.	
(xxiv) Are there any special reporting requirements?	Yes, each year a rockfish cooperative must submit an annual rockfish cooperative report to NMFS by December 15 of each year. The annual rockfish cooperative report may be made available to NMFS by mailing a copy to NMFS: Regional Administrator, P.O. Box 21668, Juneau, AK, 99802.	
(xxv) What is required in the annual rockfish cooperative report?	The annual rockfish cooperative report must include at a minimum: (A) The rockfish cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the vessels in the rockfish cooperative on a vessel-by-vessel basis; (B) The rockfish cooperative's actual retained and discarded catch of CQ, and sideboard limit on an area-by-area and vessel-by-vessel basis; (C) A description of the method used by the rockfish cooperative to monitor fisheries in which rockfish cooperative vessels participated; (D) A description of any civil actions taken by the rockfish cooperative in response to any members that exceeded their allowed catch.	

(4) *Additional mandatory requirements*—(i) *Calculation of minimum legal rockfish landings for forming a rockfish cooperative.* If an eligible rockfish harvester holds an LLP license with rockfish QS for the catcher vessel sector that does not have any legal rockfish landings associated with an eligible rockfish processor from January 1, 1996, through December 31, 2000, during the fishery seasons established in Table 28 to this part, that eligible rockfish harvester may join any rockfish cooperative with that LLP license. Any such eligible rockfish harvester that joins a rockfish cooperative may not be considered as contributing an amount of Rockfish QS necessary to meet a minimum of 75 percent of the legal rockfish landings that yielded Rockfish QS delivered to that eligible rockfish processor during the four calendar years selected by that eligible rockfish processor for the purposes of establishing the rockfish cooperative.

(ii) *Restrictions on fishing CQ assigned to a rockfish cooperative.* A person fishing CQ assigned to a rockfish cooperative must maintain a copy of the CQ permit onboard any vessel that is being used to harvest any primary rockfish species, or secondary species, or that uses any rockfish halibut PSC.

(iii) *Transfer of CQ between rockfish cooperatives.* Rockfish cooperatives may transfer CQ during a calendar year with the following restrictions:

(A) A rockfish cooperative may only transfer CQ to another rockfish cooperative;

(B) A rockfish cooperative may only receive CQ from another rockfish cooperative;

(C) A rockfish cooperative in the catcher vessel sector may not transfer any CQ to a rockfish cooperative in the catcher/processor sector;

(D) A rockfish cooperative receiving primary rockfish species CQ by transfer must assign that primary rockfish species CQ to a member(s) of the rockfish cooperative for the purposes of applying the use caps established under § 679.82(a). Secondary species or halibut PSC CQ is not assigned to a specific member of a rockfish cooperative;

(E) A rockfish cooperative may not transfer any sideboard limit assigned to it; and

(F) A rockfish cooperative may not receive any CQ by transfer after NMFS has approved a rockfish cooperative termination of fishing declaration that was submitted by that rockfish cooperative.

(5) *Use of CQ.* (i) A rockfish cooperative in the catcher vessel sector may not use a primary rockfish species CQ in excess of the amounts specified in § 679.82(a).

(ii) Rockfish cooperative primary rockfish species CQ transferred to another rockfish cooperative will apply to the use caps of a named member(s) of the rockfish cooperative receiving the CQ, as specified in the transfer application.

(A) Each pound of CQ must be assigned to a member of the rockfish cooperative receiving the CQ for purposes of use cap calculations. No member of a rockfish cooperative may exceed the CQ use cap applicable to that member.

(B) For purposes of CQ use cap calculation, the total amount of CQ held or used by a person is equal to all tons of CQ derived from the Rockfish QS held by that person and assigned to the rockfish cooperative and all tons of CQ assigned to that person by the rockfish cooperative from approved transfers.

(C) The amount of rockfish QS held by a person, and CQ derived from that rockfish QS is calculated using the individual and collective use cap rule established in § 679.82(a).

(6) *Successors-in-interest.* If a member of a rockfish cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the LLP license(s) and associated rockfish QS held by that person will be transferred to the legal successor-in-interest under the procedures described at § 679.4(k)(6)(iv)(A). However, the CQ derived from that rockfish QS and assigned to the rockfish cooperative for that year from that person remains under the control of the rockfish cooperative for the duration of that calendar year. Each rockfish cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of an LLP license and associated rockfish QS, or the transfer of the processor eligibility due to the death or dissolution of a rockfish cooperative member or associated eligible rockfish processor.

§ 679.82 Rockfish Program use caps and sideboard limits.

(a) *Use caps*—(1) *General.* Use caps limit the amount of rockfish QS and CQ of primary rockfish species that may be held or used by an eligible rockfish harvester, and the amount of primary rockfish species TAC that may be received, by an eligible rockfish processor. Use caps do not apply to secondary species or halibut PSC CQ. Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established under this paragraph (a) or by an operation of law. There are three types of use caps: person use caps; vessel use caps; and processor use caps. Person use caps limit the maximum amount of aggregate rockfish QS a person may hold and the maximum amount of aggregate primary rockfish species CQ that a person may hold or use. Person use caps apply to eligible rockfish harvesters and rockfish cooperatives. Vessel use caps limit the maximum amount of aggregate primary rockfish species CQ that a vessel operating as a catcher/processor may harvest. Processor use caps limit the maximum amount of aggregate primary rockfish species that may be received or processed by an eligible rockfish processor. All rockfish QS use caps are based on the aggregate primary rockfish species initial rockfish QS pool established by NMFS.

(2) *Eligible rockfish harvester use cap.* An eligible rockfish harvester may not individually or collectively hold or use more than:

(i) Five (5.0) percent of the aggregate rockfish QS initially assigned to the catcher vessel sector and resulting CQ unless that eligible rockfish harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section;

(ii) Twenty (20.0) percent of the aggregate rockfish QS initially assigned to the catcher/processor sector and resulting CQ unless that eligible rockfish harvester qualifies for an exemption to this use cap under paragraph (a)(6) of this section.

(3) *CQ use cap for rockfish cooperatives in the catcher vessel sector.* A rockfish cooperative may not hold or use an amount of CQ that is greater than the amount derived from 30.0 percent of the aggregate rockfish QS initially assigned to the catcher vessel sector unless the sum of the aggregate rockfish QS held by the eligible members of that rockfish cooperative prior to June 6, 2005 exceeds this use cap.

(4) *CQ use cap for a vessel in the catcher/processor sector.* (i) A vessel harvesting CQ in the catcher/processor sector may not harvest an amount of CQ that is greater than the amount derived from 60.0 percent of the aggregate rockfish QS initially assigned to the catcher/processor sector; unless:

(ii) the CQ harvested by a vessel is not greater than the amount of CQ derived from the rockfish QS assigned to the LLP licence(s) that was used on that vessel prior to June 6, 2005; and

(iii) This amount is greater than the CQ use cap for a vessel in the catcher/processor sector.

(5) *Primary rockfish species use cap for eligible rockfish processors.* (i) An eligible rockfish processor may not receive or process in excess of 30.0 percent of the aggregate primary rockfish species TAC, including CQ, assigned to the catcher vessel sector unless that eligible rockfish processor is receiving or processing an amount of aggregate primary rockfish species TAC that is not greater than the sum of the aggregate rockfish CQ derived from the amount of Rockfish QS initially assigned to those eligible rockfish harvesters eligible to form a rockfish cooperative in association with that eligible rockfish processor.

(ii) The amount of aggregate primary rockfish species TAC that is received by an eligible rockfish processor is calculated based on the sum of all aggregate primary rockfish species TAC, including CQ, received or processed by that eligible rockfish processor and the aggregate primary rockfish species TAC received or processed by any person in which that eligible rockfish processor has a ''Ten percent or greater direct or indirect ownership interest for purposes of the Rockfish Program'' as that term is defined in § 679.2.

(6) *Use cap exemptions*—(i) *Rockfish QS.* An eligible rockfish harvester may receive an initial allocation of aggregate rockfish QS in excess of the use cap in that sector only if that rockfish QS is assigned to LLP license(s) held by that eligible rockfish harvester prior to June 6, 2005, and at the time of application to participate in the Rockfish Program.

(ii) *Transfer limitations.* (A) An eligible rockfish harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section shall not receive any rockfish QS by transfer unless and until that person's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(B) If an eligible rockfish harvester receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section,

and that eligible rockfish harvester transfers rockfish QS to another person, and the amount of aggregate rockfish QS held by that eligible rockfish harvester after the transfer is greater than the use cap established in paragraph (a)(2) of this section, that eligible rockfish harvester may not hold more than the amount of aggregate rockfish QS remaining after the transfer.

(C) An eligible rockfish harvester that receives an initial allocation of aggregate rockfish QS that exceeds the use cap listed in paragraph (a)(2) of this section may not receive any rockfish QS by transfer or have any CQ attributed to that eligible rockfish harvester by a rockfish cooperative unless and until that person's holdings of aggregate rockfish QS in that sector are reduced to an amount below the use cap specified in paragraph (a)(2) of this section.

(iii) *CQ.* A rockfish cooperative may use CQ in excess of the use cap in that sector only if that CQ is derived from the rockfish QS assigned to an LLP license that was held by an eligible rockfish harvester prior to June 6, 2005 and that eligible rockfish harvester is eligible to join that cooperative.

(b) *Rockfish limited access fishery*—(1) *General.* (i) An eligible rockfish harvester may use an LLP license and assigned rockfish QS in the appropriate rockfish limited access fishery only if:

(A) That person submitted a complete and timely application for the rockfish limited access fishery that is approved by NMFS; or

(B) That LLP is not assigned to a rockfish cooperative for that calendar year, and that person has not submitted a complete and timely application to opt–out of the Rockfish Program that is approved by NMFS.

(ii) [Reserved]

(2) *Limited access fishery sectors.* (i) If an LLP license with rockfish QS in the catcher vessel sector is assigned to a limited access fishery, it is assigned to the catcher vessel rockfish limited access fishery.

(ii) If an LLP license with a rockfish QS in the catcher/processor sector is assigned a limited access fishery, it is assigned to the catcher/processor rockfish limited access fishery.

(3) *Primary rockfish species harvest limit.* All vessels that are participating in a rockfish limited access fishery may harvest an amount of primary rockfish species not greater than the TAC assigned to that primary rockfish species for the rockfish limited access fishery in that sector.

(4) *Secondary species allocations.* Secondary species shall be managed based on an MRA as established under Table 30 to this part.

(5) *Rockfish halibut PSC allocations.* Halibut caught by vessels in the rockfish limited access fishery shall be accounted against the halibut PSC allocation to the deep water species fishery complex for trawl gear for that seasonal apportionment. If the halibut PSC limit in the deep water fishery complex has been reached or exceeded for that seasonal apportionment, the rockfish limited access fishery will be closed until deep water species fishery complex halibut PSC is available for that sector.

(6) *Opening of the rockfish limited access fishery.* The Regional Administrator maintains the authority to not open a rockfish limited access fishery if he deems it appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

(c) *Opt–out fishery.* An eligible rockfish harvester who holds an LLP license and who submits an application to opt–out with that LLP licence that is subsequently approved by NMFS may not fish for that fishing year in any directed fishery for any primary rockfish species in the Central GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species with any vessel named on that LLP license.

(d) *Sideboard limitations—General.* The regulations in this section restrict the holders of LLP licenses eligible to receive rockfish QS from using the increased flexibility provided by the Rockfish Program to expand their level of participation in other groundfish fisheries. These limitations are commonly known as ''sideboards.''

(1) *Notification of affected vessel owners and LLP license holders.* After NMFS determines which vessels and LLP licenses meet the criteria described in paragraphs (d) through (h) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of sideboard limitation and issue a revised Federal Fisheries Permit and/or LLP license that displays the limitation on the face of the permit or LLP license.

(2) *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 sideboard limitation may make a contrary claim and provide evidence to NMFS. All claims must be submitted in writing to the RAM Program, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, together with any documentation or evidence supporting the request within 30 days of being notified by NMFS of the sideboard limitation. If NMFS finds the claim is unsupported, the claim will be denied in an Initial Administrative Determination (IAD). The affected persons may appeal this IAD using the procedures described at § 679.43.

(3) *Classes of sideboard restrictions.* There are several types of sideboard restrictions that apply under the Rockfish Program:

(i) General sideboard restrictions as described under this paragraph (d);

(ii) Catcher vessel sideboard restrictions as described under paragraph (e) of this section;

(iii) Catcher/processor rockfish cooperative sideboard restrictions as described under paragraph (f) of this section;

(iv) Catcher/processor limited access sideboard restrictions as described under paragraph (g) of this section; and

(v) Catcher/processor opt–out sideboard restrictions as described under paragraph (h) of this section.

(4) *General sideboard restrictions.* General sideboard restrictions apply to fishing activities during July 1 through July 31 of each year in each fishery as follows:

(i) Directed fishing for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the regulatory area of the Western GOA and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(ii) Directed fishing for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish in the Western Yakutat District and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(iii) Directed fishing for the following species in the West Yakutat District, Central GOA, and Western GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species based on the use of halibut PSC:

(A) Rex sole;

(B) Deep water flatfish;

(C) Arrowtooth flounder;

(D) Shallow water flatfish;

(E) Flathead sole; and

(iv) Directed fishing by a vessel in the catcher vessel sector for Pacific cod in the BSAI and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(5) *Vessels and LLP licenses subject to general and halibut PSC sideboard limitations.* (i) The sideboard fishing limitations described in paragraph (d) of this section apply both to the fishing

vessel itself and to any LLP license derived in whole or in part from the history of that vessel. The sideboard limitations apply to any vessel named on that LLP license. These sideboard restrictions apply even if an LLP license holder did not submit an application to participate in the Rockfish Program but that LLP license is otherwise eligible to receive rockfish QS under the Rockfish Program based on legal rockfish landings.

(ii) Except as described in paragraph (d)(5)(iii) of this section, the owner of any vessel that NMFS has determined meets one of the following criteria is subject to groundfish directed fishing sideboard limits and halibut PSC sideboard limits issued under this paragraph (d):

(A) Any vessel whose legal rockfish landings could generate rockfish QS;

(B) Any LLP license under whose authority legal rockfish landings were made;

(C) Any vessel named on an LLP license that was generated in whole or in part by the legal rockfish landings of a vessel meeting the criteria in paragraph (d)(5)(ii)(B) of this section.

(iii) Any AFA vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.63(b)(1)(i)(B) is exempt from the sideboard limits in this paragraph (d).

(6) *Determination of general sideboard ratios.* (i) Separate sideboard ratios for each rockfish sideboard fishery are established for the catcher vessel and the catcher/processor sectors. The general sideboard ratio for each fishery is determined according to the following table:

For the Management Area of the...	In the directed fishery for...	The Sideboard Limit for the Catcher/Processor Sector is...	The Sideboard Limit for the Catcher Vessel Sector is...
West Yakutat District	Pelagic Shelf Rockfish	72.4 percent of the TAC	1.7 percent of the TAC
	Pacific ocean perch	76.0 percent of the TAC	2.9 percent of the TAC
Western GOA	Pelagic Shelf Rockfish	63.3 percent of the TAC	0.0 percent of the TAC
	Pacific ocean perch	61.1 percent of the TAC	(Not released due to confidentiality requirements on fish ticket data established by the State of Alaska).
	Northern Rockfish	78.9 percent fo the TAC	0.0 percent of the TAC
BSAI	Pacific cod	N/A	0.0 percent of the TAC

(ii) Each rockfish cooperative in the catcher/processor sector will be assigned a sideboard limit for that rockfish cooperative as a percentage of the general sideboard ratio for that fishery.

(iii) The sideboard ratios that are applicable for each general sideboarded fishery for a rockfish cooperative in the catcher/processor sector are calculated by dividing the aggregate retained catch of that fishery, from July 1 through July 31 in each year from 1996 through 2002, caught by LLP licenses assigned to that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), by the total retained catch from July 1 through July 31 in each year from 1996 through 2002 caught by all groundfish vessels in that sector.

(7) *Management of annual sideboard limits*—(i) *Sideboard directed fishing allowance.* (A) If the Regional Administrator determines that an annual sideboard limit for a general rockfish sideboard fishery has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the group of vessels to which the general sideboard limit applies. A directed fishing allowance that is established for a rockfish cooperative in the catcher/processor sector may be fished only by that rockfish cooperative to which it is assigned.

(B) If the Regional Administrator determines that a sideboard limit is insufficient to support a directed fishing allowance for that species or species group, then the Regional Administrator may set the directed fishing allowance to zero for that species or species group for that sector or rockfish cooperative, as applicable.

(ii) *Directed fishing closures.* Upon attainment of a general directed fishing sideboard limit, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species group in the specified sector, regulatory area, or district.

(8) *Determination of halibut PSC sideboard ratios.* (i) Sideboards for halibut PSC are established for the catcher vessel and the catcher/processor sectors separately. Sideboard limits for halibut PSC are calculated for each rockfish cooperative in the catcher/processor sector separately. The halibut PSC sideboard limit for each sector is established according to the following table:

For the following Sector...	the annual Deep-water complex halibut PSC Sideboard Limit in the GOA is...	the annual Shallow-water complex halibut PSC Sideboard Limit in the GOA is...
Catcher/Processor Sector	3.99 percent of the GOA annual halibut mortality limit	0.54 percent of the GOA annual halibut mortality limit
Catcher Vessel Sector	1.08 percent of the GOA annual halibut mortality limit	6.32 percent of the GOA annual halibut mortality limit

(ii) Each rockfish cooperative in the catcher/processor sector will be assigned a percentage of each halibut PSC sideboard limit established under paragraph (d)(8) of this section based on the following calculation:

(A) The aggregate halibut PSC used in the deep-water complex from July 1 through July 31 in each year from 1996 through 2002 by LLP licenses assigned to that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), except primary rockfish fisheries in the Central GOA,

divided by 3.99 percent of the GOA annual halibut mortality limit; and

(B) The aggregate halibut PSC used in the shallow-water complex from July 1 through July 31 in each year from 1996 through 2002 by LLP licenses assigned to that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), divided by 0.54 percent fo the GOA annual halibut mortality limit.

(C) Catcher/processor sector participants that are not in a rockfish cooperative will receive the aggregate portion of the deep water halibut PSC sideboard limit and shallow-water halibut PSC sideboard limit not assigned to rockfish cooperatives.

(9) *Management of halibut PSC sideboard limits*—(i) *Halibut PSC sideboard limits.* The resulting halibut PSC sideboard limits established under this paragraph (d) will be published in the annual GOA groundfish harvest specification notice and expressed in metric tons.

(A) If the Regional Administrator determines that a halibut PSC sideboard limit is sufficient to support a directed fishery for groundfish specified under paragraph (d)(4)(iii) of this section for a particular sector, then the Regional Administrator may establish a halibut PSC sideboard limit for the species complex applicable only to the group of vessels in that sector to which the halibut PSC sideboard limit applies. A halibut PSC sideboard limit that is established for a rockfish cooperative in the catcher/processor sector may be fished only by that rockfish cooperative in the catcher/processor sector to which it is assigned.

(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a groundfish fishery specified under paragraph (d)(4)(iii) of this section for a particular sector then the Regional Administrator may close directed fishing by that sector or rockfish cooperative in the catcher/processor sector.

(ii) *Directed fishing closures.* Upon determining that a halibut PSC sideboard limit is or will be reached, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species complex in the specified sector, rockfish cooperative in the catcher/processor sector, regulatory area, or district. The following specific directed fishing closures will be implemented if a halibut PSC sideboard limit is reached:

(A) If the shallow-water halibut PSC sideboard limit for a sector or rockfish cooperative in the catcher/processor sector is reached, then NMFS will close directed fishing in that management area for:

(*1*) Flathead sole; and

(*2*) Shallow water flatfish.

(B) If the deep-water halibut PSC sideboard limit is reached for a sector or rockfish cooperative in the catcher/processor sector, then NMFS will close directed fishing in that management area for:

(*1*) Rex sole;

(*2*) Deep water flatfish; and

(*3*) Arrowtooth flounder.

(iii) *Halibut PSC accounting.* Any halibut mortality occurring under a CQ permit or in a rockfish limited access fishery will not apply against the halibut PSC sideboard limits established paragraph (d)(8) of this sector.

(e) *Sideboard provisions for catcher vessels*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, except as described in paragraph (d)(5)(iii) of this section, the following additional sideboards apply to catcher vessels.

(2) *Catcher vessels subject to catcher vessel sideboard limits.* Any catcher vessel that NMFS has determined meets any of the following criteria is subject to the provisions under this paragraph (e):

(i) Any catcher vessel whose legal rockfish landings could be used to generate rockfish QS for the catcher vessel sector in the Rockfish Program;

(ii) Any catcher vessel named on an LLP license under which catch history could be used to qualify that LLP license for eligibility in the Rockfish Program; or

(iii) Any catcher vessel named on an LLP license that was generated in whole or in part by the legal rockfish landings of a catcher vessel.

(3) *Prohibition for directed fishing in BSAI groundfish fisheries during July.* Vessels subject to the provisions of this paragraph (e) may not participate in directed fishing in the BSAI and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species from July 1 through July 31 in any of the following directed fisheries:

(i) Alaska plaice;
(ii) Arrowtooth flounder;
(iii) Flathead sole;
(iv) Other flatfish;
(v) Pacific ocean perch;
(vi) Rock sole; and
(vii) Yellowfin sole.

(f) *Sideboard provision—catcher/processor rockfish cooperative provisions*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following additional sideboard limits under this paragraph (f) apply to catcher/processor vessels and LLP licenses that are assigned to a rockfish cooperative in the catcher/processor sector during a calendar year.

(2) *Vessels subject to rockfish cooperative sideboard provisions.* Any vessel that NMFS has determined meets any of the following criteria is subject to groundfish sideboard directed fishing closures issued under this paragraph (f):

(i) Any catcher/processor vessel whose legal rockfish landings has been used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to a rockfish cooperative;

(ii) Any catcher/processor vessel named on an LLP license under which catch history has been used to qualify that LLP license for the Rockfish Program and that LLP license is used in a rockfish cooperative; or

(iii) Any catcher/processor vessel that has been designated in an application for CQ.

(3) *Prohibition from fishing in BSAI groundfish fisheries.* A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in directed groundfish fisheries in the BSAI and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species between July 1 and July 14 except for sablefish harvested under the IFQ Program and pollock.

(4) *Prohibitions for fishing in GOA groundfish fisheries.* A vessel subject to a rockfish cooperative sideboard provision under this paragraph (f) may not participate in any directed groundfish fishery the GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species except sablefish harvested under the IFQ Program and groundfish harvested under a CQ permit in the GOA, until the earlier of:

(i) From July 1 through July 14 if:

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(4)(iii) of this section; and

(B) The rockfish cooperative has harvested any CQ prior to July 1; or

(ii) From July 1 until 90 percent of the rockfish cooperative's primary rockfish species CQ has been harvested if:

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(4)(iii) of this section; and

(B) The rockfish cooperative has not harvested any CQ prior to July 1.

(iii) The prohibition on fishing in any directed groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species, except sablefish harvested under the IFQ Program, does not apply if all vessels in the rockfish cooperative maintain an adequate monitoring plan during all fishing for any CQ or any directed sideboard fishery as required under § 679.84(c) through (e).

(g) *Sideboard provisions—catcher/processor limited access provisions*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following sideboard limits under this paragraph (g) apply to any catcher/processor vessels and LLP licenses that are used in the rockfish limited access fishery for the catcher/processor sector.

(2) *Vessels subject to rockfish limited access fishery sideboard provisions.* Any vessel that NMFS has determined meets any of the following criteria is subject to groundfish sideboard directed fishing closures issued under this paragraph (g):

(i) Any catcher/processor vessel named on an LLP license whose legal rockfish landings were used to qualify for the Rockfish Program and the vessel named on that LLP license is assigned to a catcher/processor rockfish limited access fishery;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in the catcher/processor rockfish limited access fishery;

(iii) Any catcher/processor vessel designated in an application for the rockfish limited access fishery for the catcher/processor sector; or

(iv) Any vessel named on an LLP license with legal rockfish landings in the catcher/processor sector if that LLP license is not specified in an application for CQ or an application to opt–out.

(3) *Prohibition from directed fishing in GOA and BSAI groundfish fisheries.* If a vessel named on an LLP license used in the rockfish limited access fishery has been assigned rockfish QS greater than an amount equal to 5 percent of the Pacific ocean perch rockfish QS allocated to the catcher/processor sector, then that vessel may not participate in any:

(i) GOA groundfish fishery and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species other than the rockfish limited access fishery and sablefish harvested under the IFQ Program; or

(ii) BSAI groundfish fishery and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species other than sablefish harvested under the IFQ Program or pollock, from July 1 until 90 percent of the Central GOA Pacific ocean perch that is allocated to the rockfish limited access fishery for the catcher/processor sector has been harvested.

(h) *Sideboard provisions—catcher/processor opt–out provisions*—(1) *General.* In addition to the sideboard provisions that apply under paragraph (d) of this section, the following sideboards under this paragraph (h) apply to any catcher/processor vessels and LLP license designated in an application to opt–out that is subsequently approved by NMFS.

(2) *Vessels subject to opt–out sideboard provisions.* (i) Any catcher/processor vessel whose legal rockfish landings were used to qualify for the Rockfish Program and for which the vessel named on that LLP license is assigned to the opt–out fishery;

(ii) Any catcher/processor vessel named on an LLP license under which catch history was used to qualify that LLP license for the Rockfish Program and that LLP license is used in the opt–out fishery; or

(iii) Any catcher/processor vessel designated in an application to opt–out.

(3) *Prohibitions on Central GOA rockfish directed harvest by opt–out vessels.* Any vessel that is subject to the opt–out sideboard restriction under this paragraph (h) is prohibited from directed fishing for the following species in the following management areas:

(i) Central GOA northern rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season;

(ii) Central GOA Pacific ocean perch and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season; and

(iii) Central GOA pelagic shelf rockfish and adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(4) *Prohibitions on directed fishing in GOA groundfish fisheries without previous participation.* (i) Any vessel that is subject to the opt–out sideboard restriction under paragraph (c) of this section is prohibited from directed fishing in any groundfish fishery in the GOA and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species (except sablefish harvested under the IFQ Program) from July 1 through July 14 of each year if that vessel has not participated in that directed groundfish fishery in any two years from 1996 through 2002 during the following time periods:

(A) June 30, 1996 through July 6, 1996;

(B) June 29, 1997 through July 5, 1997;

(C) June 28, 1998 through July 4, 1998;

(D) July 4, 1999 through July 10, 1999;

(E) July 8, 2000 through July 15, 2000;

(F) July 1, 2001 through July 7, 2001; and

(G) June 30, 2002 through July 6, 2002.

(ii) For purposes of this paragraph (h), participation in a fishery in Statistical Area 650 during a time period specified in paragraph (h)(4)(i) of this section shall be considered as participation in that same fishery in Statistical Area 640 during that time period.

§ 679.83 Rockfish Program entry level fishery.

(a) *Rockfish entry level fishery*—(1) *General.* A rockfish entry level harvester and rockfish entry level processor may participate in the rockfish entry level fishery as follows:

(i) *Trawl catcher vessels.* Trawl catcher vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(ab)(2). Allocations to trawl catcher vessels shall be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish shall be allocated to trawl catcher vessels.

(ii) *Longline gear vessels.* Longline gear vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(a)(2). Allocations of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish to longline gear vessels shall be made after the allocation to trawl catcher vessels.

(iii) *Secondary species allocations.* Secondary species shall not be allocated

to the rockfish entry level fishery. Secondary species shall be managed based on a MRA for the target species as described in Table 10 to this part.

(iv) *Halibut PSC allocations—trawl vessels.* Halibut PSC from trawl vessels in the rockfish entry level fishery shall be accounted against the allocation to the deep water species fishery complex for that seasonal apportionment. If the Halibut PSC allocation in the deep water fishery complex has been achieved or exceeded for that seasonal apportionment, the rockfish entry level fishery for trawl vessels will be closed until deep water species fishery complex halibut PSC is available.

(v) *Halibut PSC allocations—longline gear vessels.* Halibut PSC from longline gear vessels in the rockfish entry level fishery shall be accounted against the allocation to the other non-trawl fishery category for that seasonal apportionment. If the Halibut PSC allocation in the other non-trawl fishery category has been reached or exceeded for that seasonal apportionment, the rockfish entry level fishery for longline gear vessels will be closed until deep water species fishery complex halibut PSC is available.

(2) *Reallocation among trawl and longline gear vessels.* Any allocation of Pacific ocean perch, northen rockfish, or pelagic shelf rockfish that has not been harvested by 1200 hours, A.l.t. on September 1, may be harvested by either trawl or longline gear vessels in the rockfish entry level fishery.

(3) *Opening of the rockfish entry level fishery.* The Regional Administrator maintains the authority to not open the rockfish entry level fishery if he deems it appropriate for conservation or other management measures. Factors such as the total allocation, anticipated harvest rates, and number of participants will be considered in making any such decision.

(b) [Reserved]

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

(a) *Recordkeeping and reporting.* See § 679.5(r).

(b) *Permits.* See § 679.4(m).

(c) *Catch monitoring requirements for catcher/processors assigned to a rockfish cooperative or rockfish limited access fishery.* The requirements under paragraphs (c)(1) through (9) of this section apply to any catcher/processor vessel participating in a rockfish cooperative or the rockfish limited access fishery, and that is subject to a sideboard limit as described in this section. At all times when a vessel has groundfish onboard that were harvested under a CQ permit that were harvested during a rockfish limited access fishery, or that were harvested by a vessel subject to a sideboard limit as described under § 679.82(d) through (g), as applicable, the vessel owner or operator must ensure that:

(1) *Catch weighing.* All groundfish are weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by a NMFS-certified observer.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) is available at all times.

(3) *Observer coverage requirements.* The vessel is in compliance with the observer coverage requirements described at § 679.50(c)(7)(i).

(4) *Operational line.* The vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples.

(5) *Fish on deck.* No fish are allowed to remain on deck unless an observer is present, except for fish inside the codend and fish accidentally spilled from the codend during hauling and dumping. Fish accidentally spilled from the codend must be moved to the fish bin.

(6) *Sample storage.* The vessel owner or operator provides sufficient space to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sample station.

(7) *Pre-cruise meeting.* The Observer Program Office is notified by phone at 1–907–271–1702 at least 24 hours prior to departure when the vessel will be carrying an observer who had not previously been deployed on that vessel. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and the observer assigned to that vessel.

(8) *Belt and flow operations.* The vessel operator stops the flow of fish and clear all belts between the bin doors and the area where the observer collects samples of unsorted catch when requested to do so by the observer.

(9) *Vessel crew in tanks or bins.* The vessel owner complies with the requirements specified in paragraph (c)(9)(i) of this section unless the vessel owner has elected, and has had approved by NMFS at the time of the annual observer sampling station inspection or as described at paragraph (c)(9)(v) of this section, one of the three monitoring options described at paragraph (c)(9)(ii) or (iii) of this section.

(i) *Option 1—No crew in bin or tank.* No crew may enter any bin or tank preceding the point where the observer samples unsorted catch, unless:

(A) The flow of fish has been stopped between the tank and the location where the observer samples unsorted catch;

(B) All catch has been cleared from all locations between the tank and the location where the observer samples unsorted catch;

(C) The observer has been given notice that the vessel crew must enter the tank; and

(D) The observer is given the opportunity to observe the activities of the person(s) in the tank; or,

(E) The observer informs the vessel operator, or his designee that all sampling has been completed for a given haul, in which case crew may enter a tank containing fish from that haul without stopping the flow of fish or clearing catch between the tank and the observer sampling station.

(ii) *Option 2—Line of sight option.* From the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch, an observer of average height (between 64 and 74 inches (140 and 160 cm)) must be able to see all areas of the bin or tank where crew could be located preceding the point where the observer samples catch. If clear panels are used to comply with this requirement, those panels must be maintained with sufficient clarity to allow an individual with normal vision to read text located two feet inside of the bin or tank. The text must be written in 87 point type (corresponding to line four on a standard Snellen eye chart) and the text must be readable from the observer sampling station, the location where the observer sorts and weighs samples, and the location from which the observer collects unsorted catch. The observer must be able to view the activities of crew in the bin from these locations.

(iii) *Option 3—Video option.* A vessel must provide and maintain cameras, a monitor, and a digital video recording system for all areas of the bin or tank where crew could be located preceding the point where the observer collects catch. The vessel owner or operator must ensure that:

(A) The system has sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date

stamp. At a minimum, all periods of time when fish are inside the bin must be recorded and stored;

(B) The system includes at least one external USB (1.1 or 2.0) hard drive and use commercially available software;

(C) Color cameras have at a minimum 420 TV lines of resolution, a lux rating of 0.1, and auto-iris capabilities;

(D) The video data is maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the beginning of a trip, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120 day period;

(E) The system provides sufficient resolution and field of view to see and read a text sample written in 130 point type (corresponding to line two of a standard Snellen eye chart) from any location within the tank where crew could be located;

(F) The system is recording at a speed of no less than 5 frames per second at all times when fish are inside the tank;

(G) A 16–bit or better color monitor, for viewing activities within the tank in real time, is provided within the observer sampling station (or location where the observer sorts and weighs samples, if applicable) and has the capacity to display all cameras simultaneously. That monitor must be operating at all times when fish are in the tank. The monitor must be placed at or near eye level and provide the same resolution as specified in paragraph (c)(9)(iii)(E) of this section;

(H) The observer is able to view any earlier footage from any point in the trip and is assisted by crew knowledgeable in the operation of the system in doing so;

(I) The vessel owner has, in writing, provided the Regional Administrator with the specifications of the system. At a minimum, this must include:

(*1*) The length and width (in pixels) of each image;

(*2*) The file type in which the data are recorded;

(*3*) The type and extent of compression;

(*4*) The frame rate at which the data will be recorded;

(*5*) The brand and model number of the cameras used;

(*6*) The brand, model, and specifications of the lenses used;

(*7*) A scale drawing of the location of each camera and its coverage area;

(*8*) The size and type of storage device;

(*9*) The type, speed, and operating system of any computer that is part of the system;

(*10*) The individual or company responsible for installing and maintaining the system;

(*11*) The individual onboard the vessel responsible for maintaining the system and working with the observer on its use; and

(*12*) Any additional information requested by the Regional Administrator.

(J) Any change to the video system that would affect the system's functionality is submitted to, and approved by the Regional Administrator in writing before that change is made.

(iv) *Failure of line of sight or video option.* If the observer determines that a monitoring option selected by a vessel owner or operator specified in paragraph (c)(9)(ii) or (c)(9)(iii) of this section fails to provide adequate monitoring of all areas of the bin where crew could be located, then the vessel shall use the monitoring option specified in paragraph (c)(9)(i) of this section until the observer determines that adequate monitoring of all areas of the bin where crew could be located is provided by the monitoring option selected by the vessel owner or operator.

(v) *Bin or tank monitoring for opt–out vessels.* Vessel owners or operators choosing to participate in the opt–out fishery must arrange for inspection of their bin monitoring option. Each option must be inspected and approved by NMFS annually and prior to its use for the first time. If the bin monitoring option is changed or altered once approved, it is invalid and the owner or operator must arrange for another inspection.

(A) *How does a vessel owner arrange for a bin monitoring option inspection?* The time and place of the inspection may be arranged by submitting to NMFS a written request for an inspection. Inspections will be scheduled no later than 10 working days after NMFS receives a complete application for an inspection, including the following information:

(*1*) Name and signature of the person submitting the application, and the date of the application.

(*2*) Street address, business address, telephone number, and fax number of the person submitting the application.

(*3*) Whether the vessel has received a bin monitoring option inspection before and, if so, the date of the most recent inspection report.

(*4*) Vessel name.

(*5*) Federal fishery permit number.

(*6*) Location of vessel where the inspection is requested to occur, including street address and city.

(*7*) A diagram drawn to scale showing the locations where all catch will be weighed and sorted by the observer, the location where unsorted catch will be collected, and the location of any video equipment or viewing panels or ports.

(B) *Where will bin monitoring option inspections be conducted?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska, Kodiak, Alaska, and in the Puget Sound area of Washington State.

(C) *Bin monitoring option inspection report.* A bin monitoring option inspection report, valid for 12 months from the date it is signed by NMFS, will be issued to the vessel owner if the bin monitoring option meets the requirements of paragraph (c)(9)(v). The vessel owner must maintain a current bin option inspection report on board the vessel at all times the vessel is required to provide an approved bin monitoring option under this paragraph (c)(9)(v)(C). The bin monitoring option inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

(d) *Catch monitoring requirements for catcher/processors assigned to the opt–out fishery.* At all times any catcher/processor vessel assigned to the opt–out fishery has groundfish onboard that vessel that were harvested subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, the vessel owner or operator must ensure that the requirements in paragraphs (c)(3), (5), (8), and (9) of this section are met.

(e) *Catch monitoring requirements for catcher vessels.* The owner or operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described at § 679.50(c)(7)(ii) at all times the vessel is participating in a rockfish cooperative, rockfish limited access fishery, or rockfish sideboard fishery described in this section.

(f) *Catch monitoring requirements for shoreside and stationary floating processors*—(1) *Catch monitoring and control plan (CMCP).* The owner or operator of a shoreside or stationary floating processor receiving deliveries from a catcher vessel described at § 679.50(c)(7)(ii) must ensure the shoreside or stationary floating processor complies with the CMCP requirements described at § 679.28(g).

(2) *Catch weighing.* All groundfish landed by catcher vessels described at § 679.50(c)(7)(ii) must be sorted,

weighed on a scale approved by the State of Alaska as described at § 679.28(c), and be made available for sampling by a NMFS-certified observer. The observer must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(3) *Notification requirements.* The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of groundfish harvested in a Rockfish Program fishery at least 1 hour prior to offloading. An observer must be available to monitor each delivery of groundfish harvested in a Rockfish Program fishery. The observer must be available the entire time the delivery is being weighed or sorted.

(g) *Catch accounting*—(1) *Primary rockfish species and secondary species.* All primary rockfish species and secondary species harvested by a vessel, including harvests in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit will be debited against the CQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(2) *Rockfish halibut PSC.* All rockfish halibut PSC used by a vessel, including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is named on an LLP license that is assigned to a rockfish cooperative and fishing under a CQ permit will be debited against the CQ for that rockfish cooperative from May 1:

(i) Until November 15; or

(ii) Until the designated representative of that rockfish cooperative has submitted a rockfish cooperative termination of fishing declaration that has been approved by NMFS.

(3) *Groundfish sideboard limits.* All groundfish harvested by a vessel, except groundfish harvested by a vessel fishing under a CQ permit in the Central GOA including groundfish harvested in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit for that groundfish species as described under § 679.82(d) through (h), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

(4) *Halibut sideboard limits.* All halibut PSC used by a vessel, except halibut PSC used by a vessel fishing under a CQ permit, or in a rockfish limited access fishery including halibut PSC used in the adjacent waters open by the State of Alaska for which it adopts a Federal fishing season, that is subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, from July 1 until July 31 will be debited against the sideboard limit established for that sector or rockfish cooperative, as applicable.

■ 13. In part 679, Tables 28, 29, and 30 are added to read as follows:

TABLE 28 TO PART 679—QUALIFYING SEASON DATES IN THE CENTRAL GOA PRIMARY ROCKFISH SPECIES

A Legal Rockfish Landing includes	Year						
	1996	1997	1998	1999	2000	2001	2002
Northern rockfish that were harvested between...	July 1 - July 20	July 1 - July 10	July 1 - July 14	July 1 - 19 and Aug. 6 - 10	July 4 - 26	July 1 - 23 and Oct. 1 - 21	June 30 - July 21
and landed by ...	July 27	July 17	July 21	July 26 and Aug. 17, respectively	August 2	July 30 and Oct. 28, respectively	July 28
Pelagic shelf rockfish that were harvested between...	July 1 - Aug. 7 and Oct. 1 - Dec. 2	July 1 - July 20	July 1 - July 19	July 4 - Sept. 3	July 4 - 26	July 1 - 23 and Oct. 1- 21	June 30 - July 21
and landed by ...	Aug. 14 and Dec. 9, respectively	July 27	July 26	Sept. 10	Aug. 2	July 30 and Oct. 28, respectively	July 28
Pacific ocean perch that were harvested between ...	July 1 - July 11	July 1 - July 7	July 1 - July 6 and July 12 - 14	July 4 - 11 and Aug. 6 - 8	July 4 - 15	July 1 - 12	June 30 - July 8
and landed by ...	July 18	July 14	July 13 and July 21, respectively	July 18 and Aug. 15, respectively	July 22	July 19	July 15

TABLE 29 TO PART 679—INITIAL ROCKFISH QS POOLS

Initial Rockfish QS Pool	Northern Rockfish	Pelagic Shelf Rockfish	Pacific ocean perch	Aggregate Primary Species Initial Rockfish QS Pool
Initial Rockfish QS Pool	9,193,183 units	7,672,008 units	18,121,812 units	34,987,002 units
Initial Rockfish QS Pool for the Catcher/Process or Sector	Based on the Official Rockfish Program Record on January 31, 2007.			

TABLE 29 TO PART 679—INITIAL ROCKFISH QS POOLS—Continued

Initial Rockfish QS Pool	Northern Rockfish	Pelagic Shelf Rockfish	Pacific ocean perch	Aggregate Primary Species Initial Rockfish QS Pool
Initial Rockfish QS Pool for the Catcher Vessel Sector	Based on the Official Rockfish Program Record on January 31, 2007.			

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained primary rockfish species
Rockfish Cooperative Fishery for vessels fishing under a CQ permit.	Pacific Cod	Catcher/Processor	4.0 percent
	Shortraker/Rougheye aggregate catch	Catcher Vessel	2.0 percent
	See Non-Allocated Secondary species for "other species"		
Rockfish Limited Access Fishery.	Pacific Cod	Catcher Vessel	8.0 percent
	Pacific Cod	Catcher/Processor	4.0 percent
	Sablefish (trawl gear)	Catcher/Processor and Catcher Vessel	3.0 percent
	Shortraker/Rougheye aggregate catch	Catcher/Processor and Catcher Vessel	2.0 percent
	Northern Rockfish	Catcher/Processor and Catcher Vessel	4.0 percent
	Pelagic Shelf Rockfish	Catcher/Processor and Catcher Vessel	4.0 percent
	Pacific ocean perch,	Catcher/Processor and Catcher Vessel	4.0 percent
	Thornyhead rockfish	Catcher/Processor and Catcher Vessel	4.0 percent
	See Non-Allocated Secondary species for other species		
Non-Allocated Secondary Species for vessels fishing under a CQ permit in Rockfish Cooperatives and Rockfish Limited Access Fisheries.	Pollock	Catcher/Processor and Catcher Vessel	20.0 percent
	Deep-Water flatfish	Catcher/Processor and Catcher Vessel	20.0 percent
	Rex Sole	Catcher/Processor and Catcher Vessel	20.0 percent
	Flathead Sole	Catcher/Processor and Catcher Vessel	20.0 percent
	Shallow-water flatfish	Catcher/Processor and Catcher Vessel	20.0 percent
	Arrowtooth	Catcher/Processor and Catcher Vessel	35.0 percent
	Other Rockfish	Catcher/Processor and Catcher Vessel	15.0 percent
	Atka Mackerel	Catcher/Processor and Catcher Vessel	20.0 percent

TABLE 30 TO PART 679—ROCKFISH PROGRAM RETAINABLE PERCENTAGES (IN ROUND WT. EQUIVALENT)—Continued

Fishery	Incidental Catch Species	Sector	MRA as a percentage of total retained primary rockfish species
	Aggregated forage fish	Catcher/Processor and Catcher Vessel	2.0 percent
	Skates	Catcher/Processor and Catcher Vessel	20.0 percent
	Other Species	Catcher/Processor and Catcher Vessel	20.0 percent
Longline gear Rockfish Entry Level Fishery.	See Table 10 to this part.		
Trawl Rockfish Entry Level Fishery.	See Table 10 to this part.		
Opt-out Fishery.	See Table 10 to this part.		
Rockfish Cooperative Vessels not fishing under a CQ permit	See Table 10 to this part.		

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Part III

Office of Personnel Management

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations—Eligibility and Public Accountability Standards; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206–AL05

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations—Eligibility and Public Accountability Standards

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the Combined Federal Campaign (CFC). These final regulations are being issued as part of OPM's effort to modernize the CFC and to realize administrative efficiencies. They were designed to address the current and future environment of the CFC where the electronic transmission of information will be more routine. As such, these regulations update the criteria for CFC eligibility, streamline the charity application process, ease the administrative burden on the local campaigns, promote the use of electronic technology in the administration of the CFC, and expand opportunities during disasters and emergencies for Federal donors to contribute to all charities participating in the CFC regardless of location.

FOR FURTHER INFORMATION CONTACT: Mark W. Lambert by telephone at (202) 606–2564; by FAX at (202) 606–5056; or by e-mail at *cfc@opm.gov.*

DATES: These regulations are effective November 20, 2006.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 553(d)(3), the Director of the Office of Personnel Management finds good cause to waive the 30 day effective date for these regulations. Many national/international organizations including federations, federation members, and independent organizations, are beginning to prepare for filling out their 2007 CFC applications for submission to OPM in January 2007. If those organizations begin that process under the current regulations, then are required to revise those applications pursuant to these revised regulations, resources may be needlessly expended, there will be confusion in revising applications, and some applicants who would be eligible under the revised regulations might not apply under the current regulations. Finally, there will be confusion and resource implications for OPM to begin the review process when applications may need to be withdrawn or revised if the regulations were not to become effective until mid December or later.

OPM is issuing final regulations concerning eligibility provisions and administrative requirements governing the participation of organizations and the administration of the CFC. These final regulations present a balanced approach to the current and anticipated future needs of the CFC and continue the tradition of accountability in the CFC by providing Federal donors with assurances that CFC participating charities provide real services and are fiscally accountable. OPM encourages stakeholders and non-profit sector institutions with an oversight mission to collaborate to ensure that all charities are fully accountable to the public they serve. OPM will continue to emphasize the importance of providing complete, accurate, and timely financial reports to donors, regulators and the public, and will support donors by providing them with information to evaluate the charities of their choice.

On June 29, 2006 (71 FR 37003), OPM issued comprehensive proposed regulations to revise the procedures governing the solicitation of Federal civilian and uniformed services personnel at the workplace for contributions to private non-profit organizations. That workplace solicitation is known as the CFC, administered by OPM under the authority of Executive Order 12353 (March 23, 1982) as amended by Executive Order 12404 (February 10, 1983). The proposed regulations were issued to reduce the burden on applicant charitable organizations seeking to qualify for the CFC, simplify the administrative process of determining whether charitable organizations are eligible to participate in the CFC, and facilitate modernization of the CFC. The proposed regulations are available at *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06–5795.pdf.*

In this final rule, OPM addresses the comments received on the proposed rules set forth at 5 CFR part 950. The 45 day public comment period ended August 14, 2006. A total of 415 comments were received from participating CFC organizations, Principal Combined Fund Organizations, members of Local Federal Coordinating Committees, individuals and a Federal government agency.

Eligibility Provisions and Public Accountability Standards

Under the existing CFC regulations, there were 16 core eligibility and public accountability standards and 3 core administrative requirements that a charitable organization was required to satisfy in order to participate in the CFC. These appeared in the form of certifications in the annual CFC application. Many of the standards required specific documentation, such as audited financial statements and an annual report to demonstrate compliance. OPM had proposed removing eight of these standards, including the requirement that participating organizations' administrative and fundraising expenses not exceed 25 percent of its total revenue. OPM had proposed modifying some of the remaining standards to eliminate documented proof of compliance. The standards of eligibility and accountability being adopted by OPM in this Final Rule are summarized as follows:

1. Section 950.202(a)—National List Eligibility Requirements—Certify that the applicant organization provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. The proposed regulation set forth that a detailed schedule would be required as part of the application that described activities in each state or foreign country in each year. In addition, OPM clarified the types of information that it would consider acceptable to determine that real services are provided or to accurately determine the individuals or entities who benefit from the services. In addition, OPM proposed adding a statement to clarify that de minimis services, benefits, assistance, or other program activities in any state or foreign country would not be accepted as a basis for eligibility. One organization and one individual commented with a concern that OPM's attempt to clarify the eligibility requirements would still result in limited additional guidance for charities, federations, and OPM personnel. Both comments recommended that OPM amend the regulations to adopt an extensive list of factors against which OPM could evaluate whether an organization has made a clear showing of actual services, benefits, assistance or activities provided in each state or foreign country and also suggested criteria that OPM should adopt to define what constitutes substantial services. OPM

carefully considered these comments but is not accepting these recommendations and the Final Rule will adopt the proposed regulation. OPM believes that the most appropriate vehicle for any additional guidance in this area is through use of the existing CFC administrative memoranda process and through additional instructions in how to complete the annual CFC application.

2. Section 950.202(b)—National List Eligibility Requirements—Certify that the applicant organization is recognized by the Internal Revenue Service as tax-exempt under 26 U.S.C. 501(c)(3) and to which contributions are tax-deductible pursuant to 26 U.S.C. 170(c)(2) and that the organization is classified as a public charity under 26 U.S.C. 509(a). OPM proposed this revision to clarify that applicant organizations must be public charities, not private foundations, or exclusively government units or instrumentalities thereof. There were no comments on this proposal and OPM is adopting this change as proposed.

3. Section 950.203(a)(1)—Public Accountability Standards—Certify that the applicant organization is a human health and welfare organization providing services, benefits, or assistance to, or conducting activities affecting, human health and welfare. No changes were proposed to this standard and it remains the same as the existing regulation.

4. Section 950.203(a)(2)—Public Accountability Standards—Certify that the applicant organization accounts for its funds in accordance with generally accepted accounting principles and that an audit of the organization's fiscal operations is completed annually by an independent certified public accountant in accordance with generally accepted auditing standards. Under the proposed rule, applicants would no longer have been required to actually submit a copy of a recent audit with the application. OPM also proposed to require a certification that the organization had an audit only if it sought CFC participation on the national/international or international parts of the charity list and if it reported $250,000 or more in revenue on its IRS Form 990. OPM proposed to exempt from the audit requirement applicant organizations seeking to participate in the CFC at the local level that reported revenue of less than $250,000. Numerous comments were received both in support of and against this proposal. Those opposed argued that reducing the number of CFC charities that are independently audited would increase the risk of fiscal mismanagement on the part of such charities and could increase the number of applications for inclusion in the CFC. Those in favor noted that the cost of an audit imposes a disproportionate burden on smaller, local charitable organizations.

OPM has considered these various concerns. OPM agrees that by requiring charities with revenues over $250,000 seeking to participate in a local campaign to submit audited financial statements with the application Federal donors will have additional assurances that such organization is fiscally accountable. OPM is also retaining the existing regulatory requirement that organizations seeking to participate on the national/international and international parts of the charity list, regardless of their revenues, certify that they account for funds in accordance with generally accepted accounting principles, have an audit of their financial statements conducted by an independent certified public accountant in accordance with generally accepted auditing standards, and submit a copy of their audited financial statements. In a departure from the existing regulation, organizations seeking local participation will be required to make those same certifications and submit a copy of their audited financial statements only if their revenues are over $250,000. Organizations with revenues between $100,000 and $250,000 seeking local participation will be required to certify that they account for funds in accordance with generally accepted accounting principles and have an audit of their financial statements conducted by an independent certified public accountant in accordance with generally accepted auditing standards, but will not be required to submit the audited financial statements with their application. Charities with revenues less than $100,000 seeking local participation will be required to certify that they have adequate financial controls in place, in form or substance as specified by OPM, but will not be required to submit these with their application.

5. Section 950.203(a)(3)—Public Accountability Standards—Certify that it prepares and submits to the IRS a complete copy of the organization's IRS Form 990 or that it is not required to submit an IRS Form 990, and provide a completed copy of the organization's IRS Form 990, including signature, with the CFC application regardless of whether or not the IRS requires the organization to file this form. OPM proposed to revise this standard to require a certification in addition to having the applicant submit a copy of the completed IRS Form 990 together with supplemental statements and Schedule A with the application. OPM also proposed to no longer routinely check to determine whether the IRS Form 990 revenues and expenses reported reconcile with the audited financial statements since this reconciliation is required to be performed by the organization on the IRS Form 990 in Parts IV–A and IV–B. Comments opposing the proposed rule noted that the level of CFC accountability would be lowered if the previously required reconciliation between the IRS Form 990 and the audited financials were removed. Comments in favor of the proposed change suggested that the current reconciliation statement that organizations are required to provide on the IRS Form 990 should be sufficient to qualify for participation in the CFC. One organization pointed out that efforts by leading nonprofit infrastructure organizations to achieve greater consistency in financial reporting standards for the charitable sector are the most appropriate vehicle to promote improved reporting to the IRS and should not be used as a means to exclude charities from the CFC. OPM agrees with the comments in favor and will adopt the proposed regulation in the final rule.

6. Section 950.203(a)(4)—Public Accountability Standards—Provide a computation of the organization's percentage of total support and revenue spent on administrative and fundraising. This percentage shall be computed from information on the IRS Form 990, submitted pursuant to existing regulations at section 950.203(a)(3), by adding the amount spent on ''management and general'' (line 14) to ''fundraising'' (line 15) and then dividing the sum by ''total revenue'' (line 12). No substantive changes were proposed to this standard. The references to specific lines of the IRS Form 990 were removed, in anticipation of future changes to the Form by the IRS and the proposed regulation will be adopted in the final rule.

7. Section 950.203(a)(5)—Public Accountability Standards—Certify that the organization is directed by an active and responsible governing body whose members have no material conflict of interest and a majority of which serve without compensation. No changes were proposed to this standard. One commenter suggested that CFC charities be required to provide the names and terms of their governing board and dates of prior year board meetings. OPM notes that under the current CFC regulations, the Director currently has the discretion

to request this information as deemed necessary.

8. Section 950.203(a)(6)—Public Accountability Standards—Certify that the organization's fundraising practices prohibit the sale or lease of its CFC contributor lists. OPM proposed removing this standard. Due to the number of public comments that claimed this could undermine donor confidence in the CFC, OPM is withdrawing this proposed regulation and will retain the existing regulation.

9. Section 950.203(a)(7)—Public Accountability Standards—Certify that the applicant organization's publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, and make no exaggerated or misleading claims. OPM had proposed to remove this standard. A majority of comments favored retention of this certification as a precaution against abuse by applicant organizations and as a possible enforcement tool in cases of use of deceptive methods to mislead donors. OPM is withdrawing the proposed regulation and will retain its existing regulation.

10. Section 950.203(a)(8)—Public Accountability Standards—Certify that contributions are effectively used for the announced purposes of the charitable organization. No changes were proposed to this standard.

11. Section 950.203(a)(12)—Public Accountability Standards—Provide a statement that the certifying official is authorized by the organization to certify and affirm all statements required for inclusion on the national list. No changes were proposed to this standard.

12. Section 950.203(a)(13)—Public Accountability Standards—Provide a statement in 25 words or less describing the program activities of the charitable organization. As proposed, this provision is being removed as an eligibility standard, but is retained as an administrative requirement in section 950.401(g)(2) and will be required from each charitable organization completing the CFC application. One commenter proposed that OPM specify that the 25-word statement is not permitted to be misleading. OPM points out that section 950.203(a)(7) of the existing CFC regulation, which will be retained in the Final Rule, requires that organizations certify that their publicity and promotional activities are truthful and non-deceptive. OPM believes that section 950.203(a)(13) is more appropriate as an administrative requirement. The proposed change is therefore adopted in the final rule.

13. Section 950.605—Sanctions Compliance Certification—Each federation, federation member and unaffiliated organization applying for participation in the CFC must, as a condition of participation, complete a certification that it is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). No changes were proposed to this certification.

Current Eligibility and Public Accountability Standards Removed in the Final Rule

1. Section 950.202(c)—National List Eligibility Requirements—Certify that the organization has no expenses connected with lobbying and attempts to influence voting or legislation at the local, State, or Federal level or alternatively, that those expenses would classify the organization as a tax-exempt organization under 26 U.S.C. 501(h). The majority of comments broadly supported OPM's proposed removal of this standard because the existing regulatory requirement has been misconstrued by some as prohibiting permissible advocacy by charities participating in the CFC.

Given the interrelatedness of items 2 and 3, and the comments received, the analysis follows after item 3—Section 950.203(a)(4)(ii).

2. Section 950.203(a)(4)(i)—Public Accountability Standards—If an organization's administrative and fundraising expenses exceed 25 percent of its total support and revenue, it must certify that its actual expenses for administration and fundraising are reasonable under all the circumstances presented. It must provide an explanation with its CFC application and also include a formal plan to reduce these expenses below 25 percent.

3. Section 950.203(a)(4)(ii)—Public Accountability Standards—The Director may reject any application from an organization with fundraising and administrative expenses in excess of 25 percent of total support and revenue, unless the organization demonstrates to the satisfaction of the Director that its actual expenses for those purposes and its plan to reduce them are reasonable under the circumstances.

A significant majority of comments on these requirements opposed OPM's proposal to remove the 25 percent administrative and fundraising rates (AFR) threshold and the explanation and reduction plan requirements as a condition of participation in the CFC. The commenters argued that allowing a charity, regardless of its AFR ratio, to participate in the CFC would result in an expansive increase in the number of applicant organizations applying to the CFC. Commenters noted that such increase could significantly raise the costs to manage the application process and increase local campaign expenses to produce larger brochures. Many comments suggested that OPM should instead increase the acceptable AFR threshold to 35 percent, consistent with the standards commonly used by stakeholders in the charitable community. Other comments stated that the existing regulation should be retained and that OPM should not expect that donors would have the capability or resources to conduct their own research regarding an organization's AFR. One national organization commenter supported the elimination of the AFR standard as long as information about these expenses is readily made available to donors. That same organization suggested that OPM require applicant organizations with AFRs that exceed 35 percent to also include an explanation or rationale for the higher expenditures.

While OPM carefully considered this matter, OPM is adopting its proposed regulation in the final rule and is removing the 25 percent AFR ceiling as an eligibility standard. The issue of obtaining a specific AFR in order to participate, the subjective nature of OPM's determination regarding an acceptable explanation of a high AFR, and the determination of the merits of the proposed reduction plan have caused an administrative burden on OPM staff. Much of the litigation affecting the CFC in the past several years have centered on this issue, resulting in a substantial resource drain on OPM staff, including the Office of CFC Operations. OPM believes that Federal donors are capable of determining what their acceptable AFR levels should be for charities they consider supporting. In the interest of ensuring that potential Federal donors are informed of participating organizations' AFR, OPM will continue to calculate and publish the AFR of participating charities by listing the AFR in CFC information including the charity lists that are distributed to the donor. OPM will add a statement to all CFC Brochures that will note that OPM, as well as the philanthropic community at large, remains concerned about excessive AFR levels. The Brochure will inform the CFC donor that the philanthropic community generally considers an AFR in excess of 35% to

be problematic and that potential CFC donors should carefully review the circumstances applicable to the potential charities of their choice to be certain they fully understand and accept the AFR situations for such charities before donating to them.

OPM believes that Federal donors should have an opportunity to donate to a wide range of charitable organizations and should not be limited in their choices to those charities with AFRs of a specific rate, so long as the AFR information is available to them to make an informed decision. OPM encourages Federal donors to be knowledgeable about those charities to which they choose to donate. OPM already requires organizations to provide their World Wide Web address, if available, where donors can research the organization. Many local campaigns also provide donors with electronic access to information from and about participating organizations. As the CFC continues to modernize and more donors have more information available through the internet, donors can have unlimited references on most organizations. OPM is retaining the rule as it was proposed.

4. Section 950.203(a)(9)—Public Accountability Standards—Certify under which governmental entity the charitable organization is chartered, incorporated or organized (Congressionally chartered or the state in which it is registered). OPM proposed to remove this standard. There were five comments which opposed the proposed removal of this standard. The comments noted that this information was not a burden to collect and could be used to obtain additional information on the organization. OPM believes that any such additional information can be obtained from the application itself or from contacting the organization directly. OPM will adopt the proposed regulation in the final rule and will remove this eligibility standard.

5. Section 950.203(a)(10)—Public Accountability Standards—Certify that the organization has received no more than 80 percent of its total support and revenues from government sources as computed by dividing line 1c by line 12 from the IRS Form 990 submitted pursuant to section 950.203(a)(3). Many comments agreed with OPM's proposed removal of this standard. Two organizations favored retaining this certification based on the rationale that the spirit of the CFC is to make the charitable donations of Federal employees available to qualified charities, while keeping out of the CFC those organizations which already have stable funding and are, in essence, providing government supported services. Two other organizations agreed with removing the standard, but requested that any such organizations be denoted with an asterisk in the CFC donor brochure to alert donors that they received more than 80 percent of their funding from government sources. OPM believes that the existing requirement has served to exclude legitimate organizations interested in diversifying their sources of support from participation in the CFC. OPM will remove this standard in the final rule as proposed.

6. Section 950.203(a)(11)—Public Accountability Standards—Certify that the organization prepares and makes available to the public upon request an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. OPM proposed to remove this standard because a significant portion of the information sought in the annual report is already the subject of a certification or obtained as a result of other eligibility requirements and public accountability standards contained in sections 950.202(a) and 950.203(a)(3). A number of comments were received both supporting and opposing the proposed rule change. One comment in favor argued that with an increasing number of organizations using expanded online resources to present information, the proposed rule change would encourage more organizations to present their information on-line. Comments against OPM's proposed regulation claimed that requiring an applicant to provide a copy of its annual report enhances accountability and transparency. OPM believes that the annual report is not an essential component of the application, particularly since the application requires a detailed description of services, benefits or activities which are carefully reviewed to determine eligibility. OPM agrees that donors should be encouraged to access this information online whenever possible or otherwise obtain an annual report directly from the charity. OPM adopts the proposed regulation in its final rule.

Changes corresponding to these changes in eligibility and public accountability requirements also are being made to the eligibility requirements for the local part of the charity list contained in section 950.204, and national and local federation standards set forth at sections 950.301, and 950.303. As proposed, national, international and local federations are required to submit documents to demonstrate compliance with the audit, financial, governance and annual report requirements. These requirements are clarified in sections 950.301(e)(2) and 950.303(e)(2). Federations provide services to 15 or more member organizations. Services include the receipt and distribution of funds through the CFC. Because federations handle approximately 80 percent of all funds distributed through the CFC, the documented evidence of compliance for federations will continue to be required.

7. Section 950.204(b)(1)(ii)—OPM has decided not to proceed with the proposed change that would require statewide services to be provided over a 3 year period, and has withdrawn that change from the final rule.

Miscellaneous Administrative Changes

In addition to changes and modifications to the eligibility standards described above, OPM proposed other CFC administrative changes to clarify CFC procedures, address areas of concern noted over the years by OPM and stakeholders, and to better recognize the use of electronic technology in the administration of the CFC. Except where noted, comments received on the following proposed regulatory changes supported such changes. Given the substantive concerns regarding two of the proposed administrative changes, involving solicitation of contractor personnel on Federal premises and the relationships between national organizations and their bona fide local affiliates, OPM is withdrawing the proposed regulation and retaining the regulations as they previously existed with minor clarifying changes. These issues are described in greater detail in the next section.

Proposed changes being adopted in the final regulations:

1. Various changes modifying references associated with the use of paper-based information and processes such that these new terms apply within an electronic CFC environment.

2. Section 950.101 includes a revised definition of ''Charity List'' to be consistent with section 950.401(g)(2). Throughout the CFC regulations, OPM has revised the terms ''National and International Lists'' to use the terms ''National/International'' and ''International'' to be consistent with the definition of ''Charity List'' in section 950.101 and the provisions of section 950.401(g)(2).

3. Current section 950.102(a) limits the annual solicitation of donors to a six week period between September 1 and December 15. One commenter stated that the six week period should be retained. OPM believes that eliminating

the requirement of a specific six week period is in the best interests of the campaign and will allow local campaign leadership to determine the appropriate length of the solicitation that must still occur between September 1 and December 15.

4. Current section § 950.102(c) states that the Director exercises general supervision over all operations of the CFC, and takes all necessary steps to ensure the achievement of campaign objectives. OPM will adopt as the final rule the proposed rule that clarifies and specifically articulates the Director's authority to perform audits and investigations of all CFC activities, and resolve any identified issues resulting from such audits and investigations.

5. Current section 950.103(f) describes a six week period for soliciting donors similar to that described in item (2) above. Corresponding proposed changes are adopted in the final rule.

6. Current section 950.103(h) states that a Federal employee may participate in a local CFC campaign only if that employee's official duty station is located within the geographic boundaries of that campaign. OPM proposed a modification to allow for contributions to organizations outside of an employee's official duty station in the cases of emergencies and disasters as defined in section 950.102(a), upon approval by the Director. OPM further proposed to give the Director authority to remove all geographic restrictions under any circumstances at some future date upon the implementation of appropriate technology. Because OPM anticipates such elimination of these geographic restrictions on giving at some point in the future, local eligibility based on adjacency and statewide presence will no longer be necessary and will be eliminated upon implementation of appropriate electronic technology to be announced by the Director at some future date, without the need for a new proposed regulatory proposal. Also see related changes proposed to section 950.204(b)(1). OPM retains these provisions in the proposed rule.

A number of comments expressed concern over OPM's plans to manage the flow of contributions during large scale emergencies or disasters and one organization suggested that OPM should study the impact of this provision on the structure and costs of the campaign. A disaster relief organization recommended that in the event of a major disaster, a separate campaign for disaster relief should be conducted concurrently with the regular CFC in order to distinguish better the contributions designated for disaster relief activities. OPM will consider this suggestion but does not believe that adoption of the proposed regulation would preclude the implementation of such a separate disaster campaign since the Director currently exercises general supervision over all operations of the CFC and has the authority to take all necessary steps to ensure the achievement of campaign objectives. Therefore, there is no need to specify the handling of the campaign during times of emergency or disaster beyond the authority already available, and OPM is adopting the rule as proposed.

7. Current section 950.104(b)(6) encourages local Federal agencies to appoint loaned executives to assist in the campaign and grant administrative leave to all loaned executives appointed. OPM is adopting the proposed rule that will clarify that Federal agencies should not place loaned executives on administrative leave since the CFC activities are considered part of the official duties of the Federal employee loaned to assist in the CFC.

8. Current section 950.104(c) states that the LFCC must annually solicit applications for the PCFO via public notice. OPM proposed to remove the requirement for an annual application and allow LFCCs to enter into multi-year agreements, at their discretion. OPM also proposed the removal of the requirement to solicit the PCFO applications via a public notice and to provide the LFCC discretion as to how to announce the solicitation as long as it reaches the audience of prospective applicants. OPM will adopt these provisions in the final rule.

9. Current section 950.106(a) states the amount a PCFO may recover for campaign expenses shall not exceed 10 percent of the estimated budget. OPM adopts the proposed regulation, correcting an error in this section which would state that the recovery amount should not exceed 110 percent of the estimated budget.

10. Current section 950.109 describes certain conflicts of interest for Federal employees who serve as an LFCC member or fundraising coordinator. OPM proposed to add clarifying language regarding LFCC members not being able to serve in their official capacity on the board of directors of the non-profit organization that administers the CFC in its local area. This situation was addressed in administrative guidance at CFC Memorandum 2002–15. OPM is adopting this proposed revision in the final rule.

11. Current sections 950.201(a)(1) and (2) discuss eligibility for national organizations to be included on the national list. OPM proposed adding references for international organizations, which must also meet these criteria, and clarifying the Director's ability to consider corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate, prior to determining eligibility. OPM is adopting these proposed revisions in the final rule.

12. Consistent with changes set forth above in paragraph 6, above, current section 950.204(b)(1) is modified to allow for the Director to provide for elimination of adjacency and statewide presence eligibility requirements commencing with the implementation of appropriate electronic technology. See related changes adopted in section 950.103(h). In addition, OPM clarifies this section to define more clearly an adjacent local campaign. A number of comments were received opposing this proposed change, noting a concern that statewide charities and adjacent charities will lose contributions if they are not included in the charity list, and donors will be affected if they lose the opportunity to contribute to charities of their choice. OPM notes that the current adjacency and statewide eligibility criteria will remain in place until appropriate technology exists to permit donors to make contributions without geographic restriction. OPM does not intend that there would be any gap period during which a potential donor would be deprived of an opportunity to donate to an eligible charity during the transition from the current rule to the elimination of geographic boundaries. OPM believes that the cost efficiencies inherent in the use of appropriate technology will only be realized by strongly encouraging the use of online electronic listings. OPM also acknowledges that some form of paper charity list may be needed to reach certain donors that may not have access to computers. In these circumstances, OPM will issue appropriate guidance to facilitate a full listing of all eligible charities within the geographic area. OPM is adopting this provision in the final rule.

13. Current section 950.204(b)(2)(iii) is being amended to add Guam, the Commonwealth of Northern Mariana Islands, and American Samoa to the list of U.S. territories whose charities may be exempt from the requirements of § 950.202(b). A number of comments pointed out that local organizations based in these territories do not generally participate in the CFC because they are not granted this exception. OPM determined that local non-profit organizations based in U.S. territories

are entitled to similar privileges as those in Puerto Rico and the Virgin Islands, provided they meet all other required eligibility requirements.

14. Current section 950.204(e) is being revised to remove the 15 day period for LFCCs to make eligibility decisions and providing instead that the decisions must be made as of a date determined by OPM and published in the annual CFC calendar.

15. OPM proposed adding a new subsection to section 950.204(g) that clarifies the LFCC's ability to consider corrective action regarding any prior violation of regulation or directive, applying an appropriate sanction or penalty, as appropriate, prior to determining eligibility of local organizations. OPM is as adopting the proposal in the final rule.

16. Current section 950.301(a) states that the Director may recognize national and international federations that conform to eligibility and accountability standards. OPM proposed clarifying the Director's ability to consider corrective action regarding any prior violation of regulation or directive applying an appropriate sanction or penalty, as appropriate, prior to determining eligibility of national and international federations. OPM is as adopting the proposal in the final rule.

17. Current section 950.301(c) states that an organization may apply for inclusion as a national CFC federation if the applicant federation has 15 or more member organizations each of which meet the eligibility criteria of sections 950.202 and 950.203. A national federation must provide copies of applications for all of its members in the initial year that it applies to participate in the CFC as a federation, but needs to submit copies of applications after the initial year only at OPM's request. OPM proposed to add clarifying language that the federation itself does not count among the 15 or more members organizations required to receive federation status. Four comments stated that the federation itself should count as one of the 15 members. OPM believes that the federation itself should not be included as one of those 15 member organizations, and is adopting the proposed clarification in the final rule.

18. Current section 950.301(d) discusses the role of national and international federations. OPM proposed a terminology change from ''decertification'' to ''withdrawal of federation status'' to conform to a terminology change proposed in section 950.603(a). Numerous commenters indicated that they opposed this change as well as the changes regarding sanctions and penalties in section 950.603(a). The commenters did not believe the proposed change provided an adequate appeal process. OPM notes that it did not change the sanctions and penalty requirements in the proposed rule. The proposed changes simply clarified and consolidated the many sections that dealt with penalties and sanctions into a single section at section 950.603(a). The requirements are those required by Federal law and OPM is adopting the proposed changes in the final rule.

19. Current section 950.301(e)(2) requires national and international federations to certify that their financial activities conform to generally accepted accounting principles (GAAP) and that they are annually audited by an independent certified public accountant in accordance with generally accepted auditing standards (GAAS). That section further requires a copy of the audited financial statements and that the audit must verify that the federation is honoring designations made to each member organization. Finally, the current regulation waives the audit requirement for newly created federations operating for less than a year. OPM proposed to clarify and simplify the regulatory language to apply to all eligibility requirements and public accountability standards, contained in sections 950.202 and 950.203 and required of independent organizations and federation members, to the national and international federations. OPM does not view this as a substantive change and is adopting the proposal in the final rule.

20. Current section 950.301(e)(2)(iii) requires national and international federations to disclose important administrative expense information to the CFC and donors in its annual report. One organization suggested that OPM should consider the differences in accounting systems used by federations and establish a standard reporting system. OPM agrees that this could be of potential value and will consider this as an area for future administrative review. OPM is retaining the provision as proposed.

21. Current section 950.303(a) states that the LFCC must approve local federations that conform to eligibility and public accountability standards. OPM proposed to clarify the LFCC's ability to consider corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate, prior to determining eligibility of local federations. OPM adopts this proposal in the final rule.

22. Current section 950.303(c) is the same requirement for local federations as that described for section 950.301(c) regarding national federations. OPM is adopting in the final rule the clarification that the local federation itself does not count among the 15 or more members required to receive federation status.

23. Current section 950.303(d) sets forth the role of local federations. OPM will adopt in the final rule a terminology change from ''decertification'' to ''withdrawal of federation status'' to conform to a terminology change in section 950.603(a).

24. Section 950.303(e)(2) sets forth the same requirement for local federations as that is described above applicable to section 950.301(e)(2). The changes adopted for national and international federations also are adopted for local federations in the final rule.

25. Section 950.303(e)(2)(iii) sets forth the same requirement for local federations as that described above in section 950.301(e)(2)(iii) for national and international federations. OPM will adopt this requirement in the final rule.

26. Current section 950.401(g)(3) states that each national and international federation and charitable organization will be assigned a code number by OPM and each local federation and local charitable organization will be assigned code numbers by the LFCC. OPM is modifying this regulation to facilitate alternative mechanisms by which OPM may assign charity codes. A number of comments expressed concerns over the manner in which OPM is planning to implement a re-coding of the charities, as part of the development of a centralized national CFC list. One comment indicated that OPM has already begun the implementation of such re-coding process by officially announcing that OPM will be assigning both national and local code numbers and requiring that LFCCs notify charities accordingly. OPM notes that while the planning for the assignment of new codes for all CFC charities has begun, the official assignment of codes will not occur before these final regulations are implemented. OPM further notes that it has had extensive consultation with stakeholders on the need for a new coding structure and the limitations that the existing regulation imposes on the structure of the campaign. OPM is adopting the proposed modification in the final rule.

27. Current sections 950.401(i) and (j) are being amended to provide that local affiliates of a national organization, not separately incorporated, still can be determined locally eligible using the national organization's IRS tax-exempt

determination letter and audited financial statements accompanied with a certification that the local affiliate operates as a bona-fide chapter or affiliate in good standing of the national organization and that the affiliate is covered by the national organization's 501(c)(3) tax exemption, IRS Form 990 and audited financial statements. The affiliate must provide a pro forma IRS Form 990, page 1 and Part V only, for CFC purposes in addition to the other documents required under section 950.204.

28. Current section 950.601 governs the release of donor names and addresses and the transmittal of this information to designated charities. OPM proposed changing the terms ''names and address'' to ''information,'' to allow other donor information to be released, such as contribution amount and home email address. Numerous comments supported this change but suggested that clear ''opt-in, opt-out'' choices be given to donors. A number of comments opposed this change in light of the proposed change to remove the prohibition against sale or lease of contributor lists in section 950.203(a)(6). However, since OPM is retaining the current regulatory prohibition against sale or lease of contributor lists in section 950.203(a)(6), and will not adopt the proposed change, OPM does not believe there is substantial disagreement with this proposed change in section 950.601 and will adopt that change in the final rule.

29. Current section 950.604 specifies that federations, PCFOs and other participants shall retain documents pertinent to the campaign for three campaign years. OPM proposed to clarify that three campaign years is actually three completed campaign periods and is not based on calendar years. OPM is adopting this clarification in the final rule.

30. Current section 950.801(a)(1) specifies the period during which OPM will accept applications from organizations seeking to be listed on the national and international parts of the charity list. OPM proposed to modify this section to replace it with a period to be determined by the Director. OPM will create, maintain, and issue a CFC calendar of events each year to define the applicable time periods. Initially, OPM will provide for a specific 60-calendar day period between December and February as the period during which OPM will accept applications. OPM adopts this modification in the final rule.

31. Current section 950.801(a)(2) states that within 35 calendar days of the closing date for the receipt of annual applications, the Director will notify each national and international applicant of the results of the application review. OPM proposed to remove the defined 35 day requirement and annually publish an anticipated date for notification on the calendar of events that OPM will maintain. OPM is adopting this provision in the final rule.

32. Current section 950.801(a)(3) states that the LFCC must select the PCFO no later than March 15 each year. OPM proposed to remove the reference to March 15 and state that the LFCC must select the PCFO no later than a date to be determined annually by OPM. OPM will provide the date in its annual CFC calendar of events and initially set the date as February 15 to allow campaigns to begin early planning for the campaign beginning after the effective date of these regulations. OPM is adopting this provision in the final rule.

33. Current section 950.801(a)(4) requires the Director to issue a national and international list of eligible organizations by June 30. OPM proposed to remove the specific date and state the requirement by a date annually determined by the Director. Several comments indicated that given the impact on all campaigns of the timely release by OPM of the national and international parts of the charity list, that a regulatory adjusted deadline would be preferred. One comment recommended that OPM change the date for issuance from June 30 to July 30 to be consistent with current actual practice. OPM believes that future release of the national and international parts of the charity list and the screening of charities will be expedited by improved technology and administrative improvements in these regulations and the use of a specific deadline in regulation will impose an unnecessary constraint. OPM is adopting the proposed change in the final rule.

34. Current section 950.801(b) requires the Director to annually issue a timetable for accepting and processing national and international applications. OPM proposed to modify this section to specify that the Director will create, maintain and issue annually a CFC calendar of events with specific dates that include the accepting and processing of national and international applications as well as other significant CFC dates. A majority of comments expressed concern that without regulatory deadlines, local campaigns could not plan adequately or hold OPM accountable for the release of the national and international parts of the charity list. The proposed CFC calendar will be official CFC guidance and OPM believes it will be sufficient to allow for adequate local administration of the campaigns. In addition, OPM does not anticipate significant changes to any of the dates being removed from the regulations and will provide the annual calendar well in advance of the annual campaign and time for selection of the PCFO for any campaign. Local campaigns will have adequate time to plan for the campaign based on the issuance of the CFC calendar of dates. OPM is adopting the provision in the final rule.

35. Current 950.901(f)(1) requires the remittance checks sent by payroll offices to the PCFO each pay period to be accompanied by a statement identifying the agency, the dates of the pay period and the total number of employee deductions. OPM proposed to add the pay period number to the information required to be on this statement. OPM is adopting this provision in the final rule.

36. Current sections 950.901(i)(1) and (i)(2) each contain specific dates for the PCFO to notify charitable organizations of the amount of pledged contributions (currently no later than February 15) and to begin its periodic distributions to charitable organizations. OPM proposed to remove the specific dates referenced in the regulation and provide that these actions will occur no later than a date to be determined annually by OPM. OPM will publish the dates in its annual CFC calendar of events. Initially, OPM plans to extend the notification date to March 15. OPM proposed to remove the requirement for monthly payments and allow all campaigns to make quarterly payments beginning no later than April 1. Several comments noted that some small organizations could be adversely affected by quarterly payments. OPM notes that the PCFO will continue to have the option of retaining the monthly payments and is adopting the proposed provisions in the final rule

37. Current sections 950.105(e), 950.302(c), 950.302(d), 950.304(c), 950.304(d), 950.403, and 950.603 all provide for certain penalties and sanctions for federations, unaffiliated organizations, and PCFOs. OPM proposed to clarify and combine these penalties and sanctions into one new section 950.603 and remove the other references from the regulations. Numerous commenters indicated that they did not agree with the changes in section 950.603(a) because they did not provide an adequate appeal process. OPM notes that it did not change the sanctions and penalty requirements in the proposed rule. The proposed changes simply clarified and

consolidated the many sections that dealt with penalties and sanctions into a single section 950.603(a). The requirements are those required by Federal law and OPM will adopt these changes in the final rule.

Proposed Regulations Withdrawn in Favor of Existing Regulations

1. Current section 950.103(g) prohibits solicitation of contractor personnel, credit union employees and other persons employed on Federal premises, and retired Federal employees but allows these individuals an opportunity to participate in the CFC by making single contribution. OPM's proposal to revise this rule by eliminating restrictions against the solicitation of the above personnel received extensive comments from the Office of Government Ethics (OGE). In particular, the OGE stated that the proposed rule did not specify any standards governing the circumstances under which the solicitations may occur. OPM agrees this is an issue that requires additional study and is not adopting the portion of the proposed rule that would have allowed the solicitation of non-Federal personnel. OPM will retain the existing regulation in order to have more time to re-examine this issue, while clarifying that donations offered by non-Federal personnel must be accepted. OPM adopts the portion of the proposed rule that allows for other electronic means of contributing, including credit cards, upon approval by the Director.

2. Sections 950.204(b)(2)(iii) and (b)(2)(iv) were proposed additions to the regulations intended to recognize financial relationships between national organizations and their bona fide local affiliates and to remove certain requirements depending on how those relationships were structured. OPM received numerous comments opposing the proposed changes which pointed to the emerging trends among national charitable organization structures to operate as single corporations with affiliates. OPM is not adopting the proposed regulations and will retain a slightly modified version of the existing regulatory language as its final rule. OPM has modified section 950.401(i) to clarify that local chapters/affiliate organizations must satisfy CFC eligibility criteria and must independently demonstrate services and accountability through the submission of independent documentation as required in sections 950.202, 950,203 or 950.204, except that a chapter or affiliate that is part of a single corporation or part of a group exemption may rely on the 26 U.S.C. 501(c)(3) tax-exempt determination and the audited financial statements for the national organization, but must submit page 1 and Part V of a pro forma IRS Form 990 used to calculate the AFR.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Charitable organizations applying to the CFC have an existing, independent obligation to comply with the eligibility and public accountability standards contained in current CFC regulations. Streamlining these standards will be less burdensome.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contributions, Government employees, Military personnel, Nonprofit organizations, and Reporting and recordkeeping requirements.

Office of Personnel Management.

Linda M. Springer,

Director

■ Accordingly, OPM amends 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

■ 1. The authority citation for part 950 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

■ 2. Amend part 950 as follows:

■ a. Remove the words ''brochure'' and ''brochures'' and add in their place ''Charity List'' and ''Charity Lists'', respectively, wherever they appear;

■ b. Remove the words ''card'' and ''cards'' and add in their place ''form'' and ''forms'', respectively, wherever they appear; and

■ c. Remove the words ''materials'', ''pamphlet'', and ''pamphlets'' and add in their place ''information'' wherever they appear.

■ 3. In § 950.101:

■ a. Remove the definition of *Campaign Year*;

■ b. Add the definitions of *Campaign Period, Charity List,* and *Independent Organization* in alphabetical order; and

■ c. In the definition of *International General Designation Option* remove the word ''campaign''.

The additions read as follows:

§ 950.101 Definitions.

* * * * *

Campaign Period means generally a 24 month period beginning with the selection of a Principal Combined Fund Organization (PCFO) or renewal of the existing PCFO's agreement with a Local Federal Coordinating Committee (LFCC) and ending with the final disbursements to charitable organizations participating in a local campaign.

Charity List means the official list of charities approved by OPM and the LFCC for inclusion in the CFC within a given geographic solicitation area. The Charity List will consist of three parts: the National/International part, the International part, and the Local part. Organizations that provide services, benefits, assistance, or program activities in 15 or more different states or a foreign country can choose to be listed on either the International or National/International part, except for members of a federation, which must be listed with the federation. Organizations that provide services, benefits, assistance, or program activities in 15 or more different states but no foreign countries will be listed on the National/International part. All qualifying local organizations within a CFC geographic solicitation area will be listed on the Local part associated with the campaign for that local CFC area.

* * * * *

Independent Organization means a charitable organization that is not a member of a federation for the purposes of the Combined Federal Campaign.

* * * * *

■ 4. In § 950.102 amend paragraph (a) by removing the text ''6 week'' from the second sentence, and amend paragraph (c) by adding two sentences at the end of the paragraph to read as follows:

§ 950.102 Scope of the Combined Federal Campaign.

* * * * *

(c) * * * OPM has the authority to audit, investigate, and report on the administration of any campaign, the organization that administers the campaign, and any national, international and local federation, federation member or independent organization that participates in the campaign for compliance with these regulations. The Director resolves any

issues reported and determines sanctions or penalties, as warranted under § 950.603.

* * * * *

■ 5. In § 950.103, revise paragraphs (f), (g) and (h) to read as follows:

§ 950.103 Establishing a local campaign.

* * * * *

(f) Each year the LFCC must establish the time period during which CFC solicitation may take place. The solicitation may not begin before September 1 and in no event will it extend beyond December 15 of each year.

(g) Current Federal civilian and active duty military employees may be solicited for contributions using payroll deduction, checks, money orders, or cash, or by electronic means, including credit cards, as approved by the Director. Contractor personnel, credit union employees and other persons present on Federal premises, as well as retired Federal employees, may make single contributions to the CFC through checks, money orders, or cash, or by electronic means, including credit cards, as approved by the Director. These non-Federal personnel may not be solicited, but donations offered by such persons must be accepted by the local campaigns.

(h) A Federal employee whose official duty station is outside the geographic boundaries of an established CFC may not be solicited in that CFC. A Federal employee may participate in a particular CFC only if that employee's official duty station is located within the geographic boundaries of that CFC. This restriction may be discontinued upon implementation of appropriate electronic technology that allows removal of the need for geographic restrictions on giving as determined by the Director. Upon a showing of extraordinary circumstances, as determined in the sole discretion of the Director, Federal employees may contribute in support of victims in cases of emergencies and disasters defined in § 950.102(a) outside the geographic boundaries of their participating CFC. Such contributions can be check, money order, or cash or by electronic means, including credit cards, as approved by the Director, but shall not be made through payroll deduction.

■ 6. Amend § 950.104 as follows:

■ a. In paragraphs (b)(4) and (b)(5), remove the word ''local''; and

■ b. Revise paragraphs (b)(6) and (c) to read as follows:

The revisions read as follows:

§ 950.104 Local Federal Coordinating Committee responsibilities.

* * * * *

(b) * * *

(6) Encouraging local Federal agencies to appoint loaned executives to assist in the campaign. CFC loaned executives' time should be charged to regular working hours. It is not appropriate to place a CFC loaned executive on administrative leave, leave without pay, or annual leave. Federal loaned executives are prohibited from working on non-CFC fundraising activities during duty hours.

* * * * *

(c) The LFCC must select a PCFO to act as its fiscal agent and campaign coordinator on the basis of presentations made to the LFCC as described in § 950.105(c). The LFCC may, in its discretion, select a PCFO to serve in that role for up to three campaign periods, subject to renewal each year following a review of performance as defined in § 950.105. The LFCC must consider the capacity of the organization to manage an efficient and effective campaign, its history of public accountability, use of funds, truthfulness and accuracy in solicitations, and sound governance and fiscal management practices as the primary factors in selecting a PCFO. The LFCC must solicit applications on a competitive basis for the PCFO no later than a date to be determined by OPM and, if the LFCC exercises discretion to enter into a multi-year arrangement, upon completion of the multi-year term. The LFCC shall solicit applications via outreach activities including: Public notice in newspapers, postings on Web sites, advertising in trade journals, dissemination among participating CFC organizations and federations, and/or outreach through local or state nonprofit associations and training centers, among others. The PCFO application period must be open a minimum of 21 calendar days. Costs incurred for soliciting applications must be added to the PCFO budget as an administrative cost.

§ 950.105 [Amended]

■ 7. Amend § 950.105 as follows:

■ a. In paragraph (b), remove the word ''printed'' in the second sentence and add in its place the word ''developed'';

■ b. In paragraph (d)(3), remove the word ''address'' and add in its place ''contact information'';

■ c. In paragraph (d)(6), add the text '', contact information and contribution amounts'' after the word ''names'';

■ d. In paragraph (d)(10), remove the word ''reprinting'' and add in its place ''reproduction and/or reissuing'' and remove the number ''10'' and add in its place ''110''; and

■ e. Remove paragraph (e).

§ 950.106 [Amended]

■ 8. In § 950.106, amend paragraph (a) by removing the number ''10'' and adding in its place ''110.''

§ 950.109 [Amended]

■ 9. In § 950.109, amend the first sentence by adding the words ''serve in any official capacity in any organization that serves as the PCFO of the local CFC, or'' before the word ''participate''.

■ 10. Amend § 950.201 as follows:

■ a. Revise the section heading;

■ b. Revise paragraphs (a)(1) through (c)(3).

The amendments to § 950.201 read as follows:

§ 950.201 National/international eligibility.

(a) * * *

(1) Determine the timetable and other procedures regarding application for inclusion in the National/International and International parts of the Charity List.

(2) Determine which organizations among those that apply qualify to be included in the National/International and International parts of the Charity List and then provide these parts of the Charity List of qualified organizations to all local campaigns. In order to determine whether an organization may participate in the campaign, the Director may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The Director retains the ultimate authority to decide whether the organization has demonstrated, to the Director's satisfaction, that the organization has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to the Director's request for information within 10 business days of the date of the request may result in a determination that the organization will not be included in the Charity List.

(b) The National/International and International parts of the Charity List shall be included in the Charity List in accordance with these regulations. The Charity List will include each organization's CFC code and other information as determined by OPM. These CFC codes must be verbatim reproduced in the Charity List.

(c) An organization on the National/International or International parts of the Charity List may elect to be removed from the applicable part of the Charity List and have its local affiliate or subunit listed on the Local part of the Charity List of organizations in its stead. For the local affiliate or subunit to be

listed in lieu of the organization on the National/International or International parts, the following procedures must be followed:

(1) The organization must send a letter to the local affiliate or subunit in that particular geographic CFC, waiving its listing on the National/International or International part of the Charity List so that its eligible local affiliate or subunit listed in the Local part of the Charity List in that geographic CFC will appear as that organization's sole listing in the Charity List.

(2) The local affiliate or subunit will include in its application to the LFCC a copy of the letter authorizing the removal of the organization from the National/International or International part of the Charity List, as well as all the required materials for completing a local organization application.

(3) Upon finding the local organization eligible, the waiver letter from the organization on the National/International or International part authorizes the LFCC to delete that organization from the National/International or International part of the Charity List.

■ 11. Revise § 950.202 to read as follows:

§ 950.202 National/international eligibility requirements.

(a) Certify that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. This requirement cannot be met on the sole basis of services provided through an ''800'' telephone number or by disseminating information and publications via the U.S. Postal Service, the internet, or a combination thereof. A schedule listing a detailed description of the services in each state (minimum 15) or foreign countries (minimum 1), including the year of service, must be included with the CFC application. The schedule must make a clear showing of national or international presence. Broad descriptions of services and identical repetitive narratives will not be accepted in the sole discretion of OPM if they do not allow OPM to adequately determine that real services were provided or to accurately determine the individuals or entities who benefited. Providing listings of affiliated groups does not sufficiently demonstrate provision of real services by the applicant. Location of residence of organization members or location of residence of visitors to a facility does not substantiate provision of services. Organizations that issue student scholarships or fellowships must indicate the state in which the recipient resides, not the state of the school or place of fellowship. Mere dissemination of information does not demonstrate acceptable provision of real services. While it is not expected that an organization maintain an office in each state or foreign country, a clear showing must be made of the actual services, benefits, assistance or activities provided in each state or foreign country. De minimis services, benefits, assistance, or other program activities in any state or foreign country will not be accepted as a basis for qualification as a national or international organization.

(b) Certify that it is an organization recognized by the Internal Revenue Service as tax exempt under 26 U.S.C. 501(c)(3) to which contributions are deductible under 26 U.S.C. § 170(c)(2) and that the organization is further classified as a public charity under 26 U.S.C. § 509(a). A copy of the letter(s) from the Internal Revenue Service granting tax exempt and public charity status must be included in the organization's application.

■ 12. Amend § 950.203 as follows:
■ a. Remove paragraphs (a)(9) through (a)(11), and (a)(13) and redesignate paragraph (a)(12) as (a)(9);
■ b. In paragraph (a) introductory text, remove the words ''national list'' in the first sentence;
■ c. In paragraph (a)(1), remove the second sentence;
■ d. Revise paragraphs (a)(2) through (a)(4); and
■ e. In the newly redesignated paragraph (a)(9), remove the phrase ''national list'' and add the phrase ''Charity List'' in its place.

The revisions read as follows:

§ 950.203 Public accountability standards.

(a) * * *

(2) Certify that it accounts for its funds on an accrual basis (cash, modified cash, modified accrual and any other methods of accounting are not acceptable) in accordance with generally accepted accounting principles and that an audit of its fiscal operations is completed annually by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the organization's most recent annual audited financial statements must be included with the application. The audited financial statements must cover the fiscal period ending not more than 18 months prior to the January of the year of the campaign for which the organization is applying. For example, the audited financial statements included in the 2007 application must cover the fiscal period ending on or after June 30, 2005.

(3) Certify that it prepares and submits to the IRS a complete copy of the organization's IRS Form 990 or that it is not required to prepare and submit an IRS Form 990 to the IRS. Provide a completed copy of the organization's IRS Form 990 submitted to the IRS covering a fiscal period ending not more than 18 months prior to the January of the year of the campaign for which the organization is applying, including signature, supplemental statements and Schedule A, with the application, or if not required to file an IRS Form 990, provide a pro forma IRS Form 990 page 1 and Part V only. IRS Forms 990EZ, 990PF, and comparable forms are not acceptable substitutes. The IRS Form 990 and audited financial statements must cover the same fiscal period.

(4) Provide a computation of the organization's percentage of total support and revenue spent on administrative and fundraising. This percentage shall be computed from information on the IRS Form 990 submitted pursuant to § 950.203(a)(3).

* * * * *

■ 13. Amend § 950.204 as follows:
■ a. Revise the section heading;
■ b. In paragraphs (a) and (b) introductory text, remove the word ''local'';
■ c. Revise paragraph (b)(1);
■ d. Revise paragraph (b)(2)(ii) and (b)(2)(iii);
■ e. Revise paragraph (e);
■ f. In paragraph (f), remove the word ''print'' from the first sentence and add in its place ''produce'' and remove the word ''campaign'' from the first sentence the first time it appears; and
■ g. Add new paragraph (g).

The revisions and addition read as follows:

§ 950.204 Local eligibility.

* * * * *

(b) * * *

(1) An organization must demonstrate to the satisfaction of the LFCC of the appropriate local campaign, that it has a substantial local presence in the geographical area covered by the local campaign, a substantial local presence in the geographical area covered by an adjacent local campaign, or substantial statewide presence. Eligibility to participate in an adjoining campaign on the basis of adjacency or statewide presence may be discontinued upon implementation of appropriate electronic technology that allows removal of the need for geographic

restrictions on giving as determined by the Director.

(i) Substantial local presence is defined as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to members of the public seeking its services or benefits. The facility must be open at least 15 hours a week and have a telephone dedicated exclusively to the organization. The office may be staffed by volunteers. Substantial local presence cannot be met on the basis of services provided solely through an ''800'' telephone number, the internet, the U.S. Postal Service or a combination thereof.

(ii) An adjacent local campaign is defined as a local campaign whose geographic border touches the geographic border of another local campaign. Participation in a local campaign via an adjacency determination does not grant the organization a substantial local presence in the adjacent local campaign and participating via adjacency cannot be used to establish adjacency to local campaigns bordering the adjacent campaign area.

(iii) Substantial statewide presence is defined as providing or conducting real services, benefits, assistance or program activities covering 30 percent of a state's geographic boundaries or providing or conducting real services, benefits, assistance or program activities affecting 30 percent of a state's population. Substantial statewide presence cannot be met on the basis of services provided solely through an ''800'' telephone number, the internet, the U.S. Postal Service or a combination thereof.

(2) * * *

(ii) A local charitable organization with annual revenue of less than $100,000 reported on its IRS Form 990 or pro form IRS Form 990 submitted to the CFC is not required to undergo an audit or to submit audited financial statements. Rather, the organization must certify that it has controls in place to ensure that funds are properly accounted for and that it can provide accurate and timely financial information to interested parties. A local organization with annual revenue of at least $100,000 but less than $250,000 must certify that it accounts for its funds on an accrual basis in accordance with generally accepted accounting principles and that an audit of its fiscal operations is completed annually as described in section 950.203(a)(2), but such organization does not have to submit a copy of its audited financial statements with its CFC application, unless requested to do so by the LFCC or Director.

(iii) An organization seeking local eligibility in Puerto Rico, the U.S. Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, or Guam is exempt from the requirements of § 950.202(b), but the organization must include with its CFC application the appropriate documentation from its governing authority demonstrating its status as a charitable organization.

* * * * *

(e) *Local eligibility determinations.* The LFCC shall communicate its eligibility decisions by a date to be determined by OPM as part of the annual timetable issued by the Director under § 950.801(b). Denial of the application by the LFCC must be sent via U.S. Postal Service certified or registered mail with a return receipt requested. Approvals may be sent via U.S. Postal Service regular first class mail. Applicants denied eligibility may appeal in accordance with § 950.205.

* * * * *

(g) In order to determine whether an organization may participate in the campaign, the LFCC may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The LFCC will decide whether the organization has demonstrated, to the LFCC's satisfaction, that the organization has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to the LFCC's request for information within 10 business days of the date of the request may result in a determination that the organization will not be included in the local part of the Charity List.

§ 950.205 [Amended]

■ 14. In § 950.205, amend paragraph (c)(4) by removing the word ''and'' and adding to the end of the sentence the text ''and supporting information to justify the reversal of the original decision''.

■ 15. Amend § 950.301 as follows:

■ a. Revise the section heading and paragraph (a);

■ b. Revise paragraph (c);

■ c. In paragraph (d), remove the word ''decertification'' in the last sentence and add in its place the words ''withdrawal of federation status'';

■ d. In paragraph (e) introductory text, add the words ''or international'' after the word ''national'';

■ e. In paragraph (e)(1), remove the word ''national list'' and add the words ''National or International part of the Charity List'' in its place; and

■ f. Revise paragraph (e)(2).

The revisions read as follows:

§ 950.301 National and international federations eligibility.

(a) The Director may recognize national and international federations that conform to the requirements and are eligible to receive designations. The Director may from time to time place a moratorium on the recognition of national and international federations. In order to determine whether the Director will recognize a national or international federation, the Director may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. The Director retains the ultimate authority to decide whether the federation has demonstrated, to the Director's satisfaction, that the federation has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to the Director's request for information within 10 business days of the date of the request may result in a determination that the federation will not be included in the Charity List.

* * * * *

(c) An organization may apply to the Director for inclusion as a national or international federation to participate in the CFC if the applicant has, as members of the proposed federation, 15 or more charitable organizations, in addition to the federation itself, that meet the eligibility criteria of §§ 950.202 and 950.203. The initial year an organization applies for federation status, it must submit the applications of all its proposed member organizations in addition to the federation application. A federation must re-establish eligibility each year, however only the applications of its new and former members that were not within the federation, as a CFC participant, in the previous year's campaign need accompany the annual federation application once an organization has obtained federation status, unless additional member applications are requested by the Director.

* * * * *

(e) * * *

(2) That it meets the eligibility requirements and public accountability standards contained in §§ 950.202 and 950.203. The federation can demonstrate that it has met the eligibility requirement in § 950.202(a) either through its own services, benefits, assistance or program activities or through its 15 members' activities.

(i) The federation must complete the certification set forth at § 950.203(a)(2) without regard to the amount of revenue reported on its IRS Form 990 and must provide a copy of its audited financial statements. The audited financial statements provided must verify that the federation is honoring designations made to each member organization by distributing a proportionate share of receipts based on donor designations to each member. The audit requirement is waived for newly created federations operating for less than a year as determined from the date of its IRS tax-exemption letter to the closing date of the CFC application period.

(ii) The federation must provide a listing of its board of directors, beginning and ending dates of each member's current term of office, and the board's meeting dates and locations for the year prior to the year of the campaign for which the organization is applying.

(iii) The federation must certify that it prepares and makes available to the public, upon request, an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. The federation must provide a copy of its most recently completed annual report covering the fiscal period ending not more than 18 months prior to January of the campaign year to which the federation is applying or the preceding calendar year. The annual report must also include an accurate description of the federation's membership dues and/or service charges received by the federation from the charitable organizations participating as members. The information must clearly present the amounts raised, the sources of contributions, the cost of fundraising, and how costs are recovered from donations.

* * * * *

■ 16. Amend § 950.302 as follows:
■ a. Revise the section heading;
■ b. In paragraph (a), add the words ''and international'' after the word ''National'';
■ c. Revise paragraph (c); and
■ d. Remove paragraphs (d) and (e).

The revision reads as follows:

§ 950.302 Responsibilities of national and international federations.

* * * * *

(c) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign. The proportionate share of receipts is determined by donor designations to the individual member organization as compared to total campaign designations.

■ 17. Amend § 950.303 as follows:
■ a. Revise paragraph (a);
■ b. Revise paragraph (c);
■ c. In paragraph (d), remove the word ''decertification'' in the last sentence and add in its place the words ''withdrawal of federation status''; and
■ d. Revise paragraph (e)(2).

The revisions read as follows:

§ 950.303 Local federations' eligibility.

(a) LFCC's must approve local federations that meet the applicable requirements, except that in order to determine whether the LFCC must recognize a local federation, the LFCC may request evidence of corrective action regarding any prior violation of regulation or directive, sanction, or penalty, as appropriate. A local federation that has been notified that it will not be included on the Local part of the Charity List because of failure to correct a prior violation may appeal the LFCC's decision to the Director in accordance with § 950.205(b). The Director retains the ultimate authority to decide whether the local federation has demonstrated, to the Director's satisfaction, that the local federation has taken appropriate corrective action. Failure to demonstrate satisfactory corrective action or to respond to a request by the LFCC or Director for information within 10 business days of the date of the request may result in a determination that the local federation will not be included in the Local part of the Charity List.

* * * * *

(c) An organization may apply to the LFCC for inclusion as a local federation to participate in the CFC if the applicant has as members of the proposed federation 15 or more charitable organizations, in addition to the federation itself, that meet the eligibility criteria of §§ 950.202, 950.203 and 950.204. The initial year an organization applies for federation status, it must submit to the LFCC applications of all its proposed member organizations in addition to the federation application. A federation must re-establish eligibility each year, however only the applications of its new and former members that were not within the federation, as a CFC participant, in the previous year's campaign need accompany the annual federation application once an organization has obtained federation status, unless additional member applications are requested by the LFCC.

* * * * *

(e) * * *

(2) That it meets the eligibility requirements contained in § 950.204 (including eligibility requirements and public accountability standards of §§ 950.202 and 950.203 that are incorporated by reference). The federation can demonstrate that it has met the eligibility requirement in § 950.204(b)(1) either through its own services, benefits, assistance or program activities or through its 15 members' activities.

(i) The federation must complete the certification set forth at § 950.203(a)(2) without regard to the amount of revenue reported on its IRS Form 990 and must provide a copy of its audited financial statements. The audited financial statements provided must verify that the federation is honoring designations made to each member organization by distributing a proportionate share of receipts based on donor designations to each member. The audit requirement is waived for newly created federations operating for less than a year as determined from the date of its IRS tax-exemption letter to the closing date of the CFC application period.

(ii) The federation must provide a listing of its board of directors, beginning and ending dates of each member's current term of office, and the board's meeting dates and locations for the year prior to the year of the campaign for which the organization is applying.

(iii) The federation must certify that it prepares and makes available to the public, upon request, an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. The federation must provide a copy of its most recently completed annual report covering the fiscal year ending not more than 18 months prior to January of the campaign year to which the federation is applying or the preceding calendar year. The annual report must also include an accurate description of the federation's membership dues and/or service charges received by the federation from the charitable organizations participating as members. The information must clearly present the amounts raised, the sources of contributions, the cost of fundraising, and how costs are recovered from donations.

* * * * *

■ 18. In § 950.304, revise paragraph (c) and remove paragraphs (d) and (e) to read as follows:

§ 950.304 Responsibilities of local federations.

* * * * *

(c) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign. The proportionate share of receipts is determined by donor designations to the individual member organization as compared to total campaign designations.

■ 19. Amend § 950.401 as follows:

■ a. In paragraph (a), remove the word ''printed'' in the second sentence and add in its place ''developed'';

■ b. In the first sentence of paragraph (e), add the words ''source of'' after the word ''official'', remove the word ''package'', and add the words ''either in hard copy or electronic format'' after the word ''available'';

■ c. In paragraph (f), remove the word ''package'' in the first and second sentences and add in its place ''design'';

■ d. Revise the introductory paragraph of (g)(1);

■ e. Revise paragraphs (g)(2) through (j); and

■ f. In paragraph (k), remove the word ''year'' and add in its place ''period'', and add to the end of the sentence the text ''or if the LFCC can demonstrate to the satisfaction of the Director that it can make the same information available electronically without disrupting donor opportunities to contribute.''

The revisions read as follows:

§ 950.401 Campaign and publicity information.

* * * * *

(g) * * *

(1) OPM will include in the annual distribution of the National/International and International parts of the Charity List explicit instructions for the production of the Charity List and language to be reproduced verbatim in the introductory section. The general information provided will include:

* * * * *

(2) Following the introductory section, the Charity List will consist of three parts—the National/International, the International, and the Local. The order of these three parts will be annually rotated in accordance with OPM instructions. The National/International and International parts will consist of faithful reproductions of the parts of National/International and International organizations, including federations, provided by OPM. The third part, the Local part, is determined by the LFCC. The order of listing of the federated and independent organizations within the three separate parts will be determined by random drawing. The order of organizations within each federation will be determined by the federation. The order within the National/International, International and Local independent groups will be alphabetical. Absent specific instructions from OPM to the contrary, each participating organization and federated group listing must include a description, not to exceed 25 words, of its services and programs, plus a telephone number for the Federal donor to request further information about the group's services, benefits, and administrative expenses. Each listing will include the organization's administration and fundraising percentage as calculated pursuant to § 950.203(a)(4). Neither the percentage of administrative and fundraising expenses, nor the telephone number count toward the 25-word statement.

(3) Each federation and charitable organization will be assigned a code in a manner determined by the Director. At the beginning of each federated group's listing will be the federation's name, code number, 25-word statement, percentage of administrative and fundraising expenses, and telephone number. The sections of the Charity List where the independent organizations are listed will begin with the titles National/International Independent Organizations, International Independent Organizations and Local Independent Organizations, respectively.

(h) Omission of an eligible charitable organization from the Charity List may require that the Charity List be corrected and reissued. Such an omission must be reported to OPM immediately upon discovery. The Director or LFCC may direct that the cost of such correction and reissue be borne by the PCFO or charged to CFC administrative expenses.

(i) *Listing of National and Local Affiliate.* Listing of a national organization, as well as its local affiliate organization, is permitted. Each national or local organization must individually meet all of the eligibility criteria and submit independent documentation as required in § 950.202, § 950.203 or § 950.204 to be included in the Charity List, except that a local affiliate of a national organization that is not separately incorporated, in lieu of its own 26 U.S.C. 501(c)(3) tax exemption letter and, to the extent required by § 950.204(b)(2)(ii), audited financial statements, may submit the national organization's 26 U.S.C. 501(c)(3) tax exemption letter and audited financial statements, but must provide its own pro forma IRS Form 990, page 1 and Part V only, for CFC purposes. The local organization must submit a certification from the Chief Executive Officer (CEO) or CEO equivalent of the national organization stating that it operates as a bonafide chapter or affiliate in good standing of the national organization and is covered by the national organization's 26 U.S.C. 501(c)(3) tax exemption, IRS Form 990 and audited financial statements. A national organization may waive its listing in the National/International or International parts of the Charity List in favor of its local affiliate by following the procedures set forth in § 950.201(c).

(j) *Multiple Listing Prohibited.* Except as provided in paragraph (i) of this section, once an organization is deemed eligible, it is entitled to only one listing in the Charity List, regardless of the number of federations to which that organization belongs.

* * * * *

■ 20. Amend § 950.402 as follows:

■ a. In paragraph (a), remove the word ''year'' and add in its place ''period'';

■ b. In paragraph (c), add to the end of the second sentence the text '', except in cases of emergencies or disasters as approved by the Director'', and add a new third sentence; and

■ c. In paragraph (d), revise the last sentence.

The addition and revision read as follows:

§ 950.402 Pledge Form.

* * * * *

(c) * * * This restriction does not apply upon implementation of electronic technology that removes the geographic restrictions on giving as announced by the Director.

(d) * * * For example, if an employee indicates a total gift of $100 on the pledge form, but designates $50 to one organization and $25 to each of three other organizations, the PCFO must adjust the pledges proportionately by entering a pledge of $40 to the first organization and $20 to each of the three other organizations.

§ 950.403 [Removed]

■ 21. Remove § 950.403.

■ 22. Revise § 950.601 to read as follows:

§ 950.601 Release of contributor information.

(a) The pledge form, designed pursuant to § 950.402, must allow a contributor to indicate if the contributor does wish his or her name, contribution amount, and home contact information forwarded to the charitable organization or organizations designated. A PCFO's failure to honor a contributor's wish may result in the PCFO being sanctioned or penalized as provided for in § 950.603(a).

(b) The pledge form shall permit a contributor to specify which information, if any, he or she wishes released to organizations receiving his or her donations.

(c) It is the responsibility of the PCFO to forward the contributor information for those who have indicated that they wish this information released to the recipient organization directly, if the organization is independent, and to the organization's federation if the organization is a member of a federation. The PCFO may not sell or make any other use of this information.

■ 23. In § 950.602, revise paragraph (b) to read as follows:

§ 950.602 Solicitation methods.

* * * * *

(b) Special CFC fundraising events, such as raffles, lotteries, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these regulations are permitted during the campaign period if approved by the appropriate agency head or government official, consistent with agency ethics regulations. CFC special fundraising events should be undertaken in the spirit of generating interest in the CFC and be open to all individuals without regard to whether an individual participates in the CFC. Chances to win must be disassociated from amount of contributions, if any. Raffle prizes should be modest in nature and value. Examples of appropriate raffle prizes may include opportunities for lunch with Agency Officials, agency parking spaces for a specific time period, and gifts of minimal financial value. Any special CFC fundraising event and prize or gift should be approved in advance by the Agency's ethics official.

* * * * *

■ 24. In § 950.603, revise the section heading and paragraph (a) to read as follows:

§ 950.603 Sanctions and penalties.

(a)(1) The Director may impose sanctions or penalties on a federation, charitable organization or PCFO for violating these regulations, other applicable provisions of law, or any directive or instruction from the Director. The Director will determine the appropriate sanction and/or penalty, up to and including expulsion from the CFC. In determining the appropriate sanction and/or penalty, the Director will consider previous violations, harm to Federal employee confidence in the CFC, and any other relevant factors. The Director may bar a federation or charitable organization from serving as PCFO, for a period not to exceed one campaign period, if it is determined that that the federation or charitable organization has violated any provisions of these regulations. A federation, charitable organization or PCFO will be notified in writing of the Director's intent to sanction and/or penalize and will have 10 business days from the date of receipt of the notice to submit a written response. The Director's final decision will be communicated in writing to the federation, charitable organization, or PCFO, with a copy to the appropriate LFCC.

(2) The Director may withdraw federation status with respect to a national, international or local federation that makes a false certification or fails to comply with any directive of the Director, or to respond in a timely fashion to a request by the Director or LFCC for information or cooperation, including with respect to an investigation or in the settlement of disbursements. The LFCC may recommend the withdrawal of federation status with respect to a local federation. As stated in §§ 950.301(d) and 950.303(d), failure to meet minimum federation eligibility requirements shall not be deemed to be a withdrawal of federation status subject to a hearing on the record. Eligibility decisions shall follow the procedures in §§ 950.301(f) and 950.303(f). A federation will be notified in writing of the Director's intent to withdraw federation status for a period of up to one campaign period and will have 10 business days from the date of receipt of the notice to submit a written response. On receipt of the response, or in the absence of a timely response, the Director or representative shall set a date, time, and place for a hearing. The federation shall be notified at least 10 business days in advance of the hearing. A hearing shall be conducted by a hearing officer designated by the Director unless it is waived in writing by the federation. After the hearing is held, or after the Director's receipt of the federation's written waiver of the hearing, the Director shall make a final decision on the record, taking into consideration the recommendation submitted by the hearing officer. The Director's final decision will be communicated in writing to the federation, with a copy to the appropriate LFCC.

(3) A federation, charitable organization or PCFO sanctioned or penalized under any provision of these regulations must demonstrate to the satisfaction of the Director that it has taken corrective action to resolve the reason for sanction and/or penalty and has implemented reasonable and appropriate controls to ensure that the situation will not occur again prior to being allowed to participate in subsequent CFCs and/or serving as a PCFO for a campaign.

* * * * *

■ 25. Revise § 950.604 to read as follows:

§ 950.604 Records retention.

Federations, PCFOs and other participants in the CFC shall retain documents pertinent to the campaign for at least three completed campaign periods. For example, documentation regarding the 2006 campaign must be retained through the completion of the 2007, 2008 and 2009 campaign periods (*i.e.* until early 2011). Documents requested by OPM must be made available within 10 business days of the request.

■ 26. Amend § 950.801 as follows:

■ a. Revise paragraphs (a)(1) through (4); and

■ b. In paragraph (b), add the words ''and international'' in the first sentence after the word ''national'', and add a new second sentence.

The revisions and addition read as follows:

§ 950.801 Campaign schedule.

(a) * * *

(1) During a period between December and January, as determined by the Director, OPM will accept applications from organizations seeking to be listed on the National/International and International parts of the Charity List.

(2) The Director will determine a date after the closing of the receipt of applications by which the Director will issue notices to each national and international applicant organization of the results of the Director's review. The date will be part of the annual timetable issued by the Director under § 950.801(b).

(3) Local Federal Coordinating Committees must select a PCFO no later than a date to be determined by OPM. The date will be part of the annual

timetable issued by the Director under § 950.801(b).

(4) The Director will issue the National/International and International parts of the Charity List to all local campaigns by a date to be determined by OPM. The date will be part of the annual timetable issued by the Director under § 950.801(b).

* * * * *

(b) * * * The Director will issue the timetable for a campaign period no later than October 31 of the year preceding the campaign period.

■ 27. Amend § 950.901 as follows:

■ a. In paragraph (c)(1), remove the text ''printed or purchased from a central source'' and add in its place ''reproduced'', and remove the word ''distributed'' and add in its place ''made available'';

■ b. In paragraph (c)(2), add the word ''paper'' after the word ''each'', and add the text ''or an acceptable electronic version'' after the word ''authorization'';

■ c. In paragraph (f)(1), add the text ''pay period number,'' after the word ''period,''; and

■ d. Revise paragraphs (i)(1) and (i)(2); The revisions read as follows:

§ 950.901 Payroll allotment.

* * * * *

(i) * * *

(1) The PCFO shall notify the federations, national and international organizations, and local organizations as soon as practicable after the completion of the campaign, but in no case later than a date to be determined by OPM, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds, if any, allocated to them. The date will be part of the annual timetable issued by the Director under § 950.801(b).

(2) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit disbursements at least quarterly, minus the approved proportionate share for administrative cost reimbursement and the PCFO fee set forth in § 950.106. It shall remit the contributions to each organization or to the federation, if any, of which the organization is a member. The PCFO will distribute all CFC receipts beginning April 1, and quarterly thereafter. At the close of each disbursement period, the PCFO's CFC account shall have a balance of zero.

* * * * *

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Vol. 71, No. 223

Monday, November 20, 2006

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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
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TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

64111–64438 1
64439–64630 2
64631–64880 3
64881–65034 6
65035–65364 7
65365–65710 8
65711–66092 9
66093–66228 13
66229–66430 14
66431–66642 15
66643–66824 16
66825–67030 17
67031–67290 20

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

180 66431

3 CFR

Proclamations:
8074 64613
8075 64615
8076 64617
8077 64619
8078 64621
8079 64623
8080 64627
8081 65363
8082 66429
8083 66825

Executive Orders:
12170 (See Notice of November 9, 2006) 66227
13067 (See Notice of November 1, 2006) 64629
13400 (See Notice of November 1, 2006) 64629
13402 (Amended by 13414) 65365
13412 (See Notice of November 1, 2006) 64629
13414 65365

Administrative Orders:
Memorandums:
Memorandum of November 6, 2006 66223
Memorandum of November 14, 2006 67029
Notices:
Notice of November 1, 2006 64629
Notice of November 9, 2006 66227
Presidential Determinations:
No. 2006-25 64431
No. 2006-26 of September 29, 2006 65035
No. 2006-27 of September 29, 2006 65367
No. 2007-1 64435
No. 2007-2 64437
No. 2007-3 of October 16, 2006 65369

5 CFR

550 66827
890 66828
892 66827
950 67276

7 CFR

301 .....66829, 66831
800 65371
801 65371
922 66093
930 .....66095, 66833
948 66835
958 65037
981 65373
983 66643
984 66645
993 66837
1210 64439
1290 64631
1400 66432
1430 65711
2902 67031
4279 67032

Proposed Rules:
46 65426
51 64478
210 65753
220 65753
301 64767
305 66881
319 66881
457 .....66694, 66698
966 66702
1205 67072
1435 66142

9 CFR

Proposed Rules:
55 64650
81 64650
93 65758
94 65758
95 65758

10 CFR

20 65686
32 65686
50 66648
626 65376

Proposed Rules:
35 64168
50 66705
51 .....64169, 67072

12 CFR

308 65711
328 66098
611 65383
612 65383
613 65383
614 65383
615 65383

13 CFR

101 65713
121 66434
123 65713

124 66434

14 CFR

39 ....64441, 64881, 64884, 65041, 65043, 65045, 65047, 65387, 65389, 65391, 65714, 65716, 65719, 66104, 66106, 66229, 66657, 66661, 66664, 66666
71 ....64887, 66444
91 66840
93 64111
97 ....66445, 66447
121 66840
125 66840
135 66840
Proposed Rules:
25 ....64478, 65759
33 66888
39 ....64482, 64484, 64651, 64653, 64904, 65062, 65430, 66472, 66474, 66889, 66891, 67073, 67075, 67077, 67079, 67082, 67084
71 ....66144, 66893, 66894
121 66634
125 66634
135 66634

15 CFR

730 67034
738 67034
740 67034
742 67034
746 67034
750 67034
752 67034
774 67034
902 67210
Proposed Rules:
801 ....66706, 67086

16 CFR

Proposed Rules:
310 65762
1630 66145
1631 66145

17 CFR

140 64443
200 65393
240 65393
Proposed Rules:
170 64171

18 CFR

292 64342
366 ....65049, 65200
367 65200
368 65200
369 65200
375 65200
385 65049
Proposed Rules:
38 64655
40 64770
284 64655

20 CFR

404 ....66840, 66860, 67037
416 ....66840, 66860

21 CFR

203 ....66108, 66448
205 66448
520 65052
522 ....64451, 65052
558 ....65053, 66231

22 CFR

97 64451

23 CFR

635 66450
Proposed Rules:
630 64173

24 CFR

291 ....64422, 65322

25 CFR

Proposed Rules:
15 64181
18 64181
150 64181
152 64181
179 64181
502 66147
546 66147

26 CFR

1 ....64458, 65722, 66232
301 64458
Proposed Rules:
1 ....64488, 66285
20 64488
25 64488
31 64488
53 64488
54 64488
56 64488
301 ....64496, 54501

27 CFR

9 ....65409, 66454
Proposed Rules:
9 ....65432, 65437

28 CFR

Proposed Rules:
524 64504
545 64505
550 64507

29 CFR

4007 66867
4022 66455
4044 66455

30 CFR

Proposed Rules:
914 66148
943 66150

31 CFR

Proposed Rules:
1 65763

32 CFR

58 64631
199 66871
235 66457
245 66110
312 64631
318 64632
323 64633

33 CFR

110 66668
117 ....64113, 64888, 65412, 66669, 66673, 66872, 66874
165 ....64114, 64116, 64634, 66110, 67055, 67057
401 66112
Proposed Rules:
110 66708
117 ....65443, 66711, 66713, 66895
151 65445
165 64662

34 CFR

668 ....64378, 64402
673 64378
682 64378
685 64378
690 64402
691 64402

36 CFR

Proposed Rules:
1 65446
241 66715
251 66715
261 66715

37 CFR

1 64636
201 64639

38 CFR

3 67059

39 CFR

3 64647
111 ....64118, 64121
501 65732
3001 66675

40 CFR

9 65574
52 ....64125, 64460, 64465, 64468, 64470, 64647, 64888, 64891, 65414, 65417, 65740, 66113, 66679
60 66681
70 67061
80 67089
81 67065
141 65574
142 65574
174 64128
239 ....66685, 66686
258 ....66685, 66686
271 66116
707 66234
799 66234
Proposed Rules:
52 ....64182, 64668, 64906, 65446, 65764, 66153
60 ....65302, 66720
63 ....64907, 66064
81 64906
82 64668
239 66722
258 66722
271 ....65765, 66154

42 CFR

414 65884
484 65884

43 CFR

2091 67066
2710 67066
Proposed Rules:
4 64181
30 64181

44 CFR

64 66245
67 ....64132, 64141, 64148, 66248, 66250, 66270, 67068
Proposed Rules:
67 ....64183, 64208, 64211, 64674, 66285

45 CFR

1624 65053
Proposed Rules:
1621 65064

47 CFR

1 66460
2 66460
15 66876
36 65743
51 ....65424, 65743
52 65743
53 65743
54 65743
63 65743
64 65743
69 65743
73 ....64150, 64152, 64153, 64154, 65425, 66466
76 64154
97 66460
Proposed Rules:
15 66897
27 64917
73 ....65447, 66592
80 65447

48 CFR

225 65752
252 65752
1834 66120
1842 66120
1852 66120
Proposed Rules:
Ch. 2 65769
235 65769
252 65768

49 CFR

571 64473
Proposed Rules:
383 66723
384 66723
390 66723
391 66723
571 66480

50 CFR

17 ....65662, 66008, 66374
223 66466
229 ....66469, 66688, 66690
622 ....65061, 66878
635 64165
648 ....64903, 66692
660 ....66122, 66693
665 64474
679 67210
Proposed Rules:
17 ....65064, 66292, 67089
224 66298
229 66482
635 ....64123, 66154
648 ....64214, 66748
660 64216
679 ....64218, 66905

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 20, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in Michigan et al.; published 11-17-06

Prunes (dried) produced in California; published 11-17-06

AGRICULTURE DEPARTMENT

Energy Policy and New Uses Office, Agriculture Department

Biobased products; designation guidance for federal procurement; published 11-20-06

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Women, infants, and children; special supplement nutrition program—

Miscellaneous vendor-related provisions; published 12-30-99

COMMERCE DEPARTMENT

Industry and Security Bureau

Export adminstration regulations:

Foreign policy controls on surreptitious communications intercepting devices; imposition; published 11-20-06

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Marine mammals:

Commercial fishing authorizations—

Atlantic Large Whale Take Reduction Plan; published 11-16-06

Atlantic Large Whale Take Reduction Plan; published 11-16-06

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Program Fraud Civil Remedies Act; implementation; published 10-20-06

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:

National oil and hazardous substances contingency plan priorities list; published 9-19-06

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

New York; published 10-20-06

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Indian Housing Block Grant Program; minimum funding extension; published 10-19-06

PERSONNEL MANAGEMENT OFFICE

Absence and leave:

Senior Executive Service; accrual and accumulation; published 10-19-06

Combined Federal Campaign; eligibility requirements and public accountability standards; published 11-20-06

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Military retired pay and veterans disability compensation for certain military retirees; full concurrent receipt phase-in; published 11-20-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tomatoes grown in—

Florida; comments due by 12-1-06; published 11-16-06 [FR 06-09253]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Emerald ash borer; comments due by 12-1-06; published 10-2-06 [FR 06-08424]

Poultry improvement:

National Poultry Improvement Plan; low pathogenic avian influenza; voluntary control program and indemnity payment; comments due by 11-27-06; published 9-26-06 [FR 06-08155]

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Florida citrus fruit crop insurance provisions; comments due by 11-27-06; published 10-13-06 [FR E6-16635]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Women, infants, and children; special supplement nutrition program—

Vendor cost containment; comments due by 11-29-06; published 11-29-05 [FR 05-23365]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Clear title; protection for purchasers of farm products; technical changes; comments due by 11-27-06; published 9-27-06 [FR 06-08268]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

Georgia

Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Hagfish; comments due by 12-1-06; published 11-1-06 [FR E6-18391]

West Coast States and Western Pacific fisheries—

Groundfish; comments due by 12-1-06; published 11-16-06 [FR E6-19395]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Futures commission merchants; equity capital withdrawal limitations; comments due by 11-28-06; published 9-29-06 [FR E6-16035]

Registered futures associations; membership requirement; comments due by 12-1-06; published 11-1-06 [FR E6-18270]

CONSUMER PRODUCT SAFETY COMMISSION

Federal Hazardous Substances Act:

Infant cushions/pillows or pillow-like products; comments due by 11-27-06; published 9-27-06 [FR 06-08265]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Brand name specifications use; OMB policy implementation; comments due by 11-27-06; published 9-28-06 [FR 06-08200]

Online Representations and Certifications Application archiving capability; comments due by 11-27-06; published 9-28-06 [FR 06-08203]

Purchases from overseas sources; reporting; comments due by 11-27-06; published 9-28-06 [FR 06-08208]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 11-30-06; published 10-31-06 [FR E6-18172]

Indiana; comments due by 11-30-06; published 10-31-06 [FR E6-18168]

Louisiana; comments due by 11-29-06; published 10-30-06 [FR E6-18050]

Nevada; comments due by 11-29-06; published 10-30-06 [FR E6-18158]

Utah; comments due by 12-1-06; published 11-1-06 [FR E6-18379]

Hazardous waste program authorizations:

Washington; comments due by 11-29-06; published 10-30-06 [FR E6-18222]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bentazon, carboxin, dipropyl isocinchomeronate, oil of

lemongrass and oil of orange; comments due by 11-27-06; published 9-27-06 [FR 06-08255]
Ethaboxam; comments due by 11-27-06; published 9-27-06 [FR 06-08176]
Flufenoxuron; comments due by 11-28-06; published 9-29-06 [FR E6-15931]
Metconazole; comments due by 11-27-06; published 9-27-06 [FR 06-08256]
p-chlorophenoxyacetic acid, glyphosate, difenzoquat, and hexazinone; comments due by 11-27-06; published 9-27-06 [FR E6-15840]
Pendimethalin; comments due by 11-27-06; published 9-27-06 [FR 06-08254]
Propanil, phenmedipham, triallate, and MCPA; comments due by 11-27-06; published 9-27-06 [FR E6-15841]
Quizalofop ethyl; comments due by 11-27-06; published 9-27-06 [FR 06-08253]
Soybean oil, ethoxylated; comments due by 11-28-06; published 9-29-06 [FR 06-08384]
Superfund program:
National oil and hazardous substances contingency plan priorities list; comments due by 11-27-06; published 9-27-06 [FR E6-15854]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Brand name specifications use; OMB policy implementation; comments due by 11-27-06; published 9-28-06 [FR 06-08200]
Online Representations and Certifications Application archiving capability; comments due by 11-27-06; published 9-28-06 [FR 06-08203]
Purchases from overseas sources; reporting; comments due by 11-27-06; published 9-28-06 [FR 06-08208]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs, biological products, and animal drugs; foreign and domestic establishment registration and listing requirements; comments due by 11-27-06; published 8-29-06 [FR 06-07172]
Protection of human subjects:
Emergency research conducted without informed consent; hearing; comments due by 11-27-06; published 8-29-06 [FR E6-14264]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Oregon; comments due by 11-27-06; published 10-27-06 [FR E6-17971]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat designations—
Trichostema austromontanum ssp. compactum; comments due by 11-27-06; published 9-26-06 [FR 06-08190]
Findings on petitions, etc.—
Idaho springsnail, etc.; comments due by 11-27-06; published 9-28-06 [FR E6-15915]

INTERIOR DEPARTMENT
Reclamation Bureau
Public conduct on Reclamation facilities, lands, and waterbodies:
Hoover Dam rules of conduct; removal; comments due by 11-27-06; published 9-28-06 [FR E6-15916]

JUSTICE DEPARTMENT
Drug Enforcement Administration
Combat Methamphetamine Epidemic Act of 2005:
Scheduled listed chemical products; retail sales requirements; comments due by 11-27-06; published 9-26-06 [FR 06-08194]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Brand name specifications use; OMB policy implementation; comments due by 11-27-06; published 9-28-06 [FR 06-08200]
Online Representations and Certifications Application archiving capability; comments due by 11-27-06; published 9-28-06 [FR 06-08203]
Purchases from overseas sources; reporting; comments due by 11-27-06; published 9-28-06 [FR 06-08208]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
NARA facilities:
Personal property inspection; comments due by 11-27-06; published 9-28-06 [FR E6-15927]

POSTAL SERVICE
Domestic Mail Manual:
Infectious substances; mailing and packaging standards; comments due by 12-1-06; published 11-1-06 [FR E6-18062]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; comments due by 11-27-06; published 10-12-06 [FR E6-16891]
Rolls-Royce plc; comments due by 11-28-06; published 9-29-06 [FR E6-16047]
Airworthiness standards:
Special conditions—
Boeing 737 airplanes; comments due by 11-29-06; published 11-9-06 [FR E6-18906]
General Electric Co. GEnx turbofan engine models; Open for comments until further notice; published 11-17-06 [FR 06-09230]
Class B airspace; comments due by 11-27-06; published 10-13-06 [FR 06-08688]
Class E airspace; comments due by 11-27-06; published 10-26-06 [FR 06-08845]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Brake hoses; comments due by 11-30-06; published 11-15-06 [FR E6-19198]

TRANSPORTATION DEPARTMENT
Pipeline and Hazardous Materials Safety Administration
Hazardous materials:
Packaging requirements; miscellaneous amendments; comments due by 11-30-06; published 9-1-06 [FR 06-07360]
Pipeline safety:
Gas distribution operators; public awareness regulations applicability; comments due by 11-28-06; published 9-29-06 [FR E6-16031]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Controlled foreign corporations and other property; exclusion from gross income of previously taxed earnings and profits; comments due by 11-27-06; published 8-29-06 [FR 06-07195]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 6061/P.L. 109–367
Secure Fence Act of 2006 (Oct. 26, 2006; 120 Stat. 2638)

Last List October 19, 2006

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1	(869–060–00001–4)	5.00	[4] Jan. 1, 2006
2	(869–060–00002–0)	5.00	Jan. 1, 2006
3 (2005 Compilation and Parts 100 and 102)	(869–060–00003–8)	35.00	[1] Jan. 1, 2006
4	(869–060–00004–6)	10.00	Jan. 1, 2006
5 Parts:			
1–699	(869–060–00005–4)	60.00	Jan. 1, 2006
700–1199	(869–060–00006–2)	50.00	Jan. 1, 2006
1200–End	(869–060–00007–1)	61.00	Jan. 1, 2006
6	(869–060–00008–9)	10.50	Jan. 1, 2006
7 Parts:			
1–26	(869–060–00009–7)	44.00	Jan. 1, 2006
27–52	(869–060–00010–1)	49.00	Jan. 1, 2006
53–209	(869–060–00011–9)	37.00	Jan. 1, 2006
210–299	(869–060–00012–7)	62.00	Jan. 1, 2006
300–399	(869–060–00013–5)	46.00	Jan. 1, 2006
400–699	(869–060–00014–3)	42.00	Jan. 1, 2006
700–899	(869–060–00015–1)	43.00	Jan. 1, 2006
900–999	(869–060–00016–0)	60.00	Jan. 1, 2006
1000–1199	(869–060–00017–8)	22.00	Jan. 1, 2006
1200–1599	(869–060–00018–6)	61.00	Jan. 1, 2006
1600–1899	(869–060–00019–4)	64.00	Jan. 1, 2006
1900–1939	(869–060–00020–8)	31.00	Jan. 1, 2006
1940–1949	(869–060–00021–6)	50.00	Jan. 1, 2006
1950–1999	(869–060–00022–4)	46.00	Jan. 1, 2006
2000–End	(869–060–00023–2)	50.00	Jan. 1, 2006
8	(869–060–00024–1)	63.00	Jan. 1, 2006
9 Parts:			
1–199	(869–060–00025–9)	61.00	Jan. 1, 2006
200–End	(869–060–00026–7)	58.00	Jan. 1, 2006
10 Parts:			
1–50	(869–060–00027–5)	61.00	Jan. 1, 2006
51–199	(869–060–00028–3)	58.00	Jan. 1, 2006
200–499	(869–060–00029–1)	46.00	Jan. 1, 2006
500–End	(869–060–00030–5)	62.00	Jan. 1, 2006
11	(869–060–00031–3)	41.00	Jan. 1, 2006
12 Parts:			
1–199	(869–060–00032–1)	34.00	Jan. 1, 2006
200–219	(869–060–00033–0)	37.00	Jan. 1, 2006
220–299	(869–060–00034–8)	61.00	Jan. 1, 2006
300–499	(869–060–00035–6)	47.00	Jan. 1, 2006
500–599	(869–060–00036–4)	39.00	Jan. 1, 2006
600–899	(869–060–00037–2)	56.00	Jan. 1, 2006
900–End	(869–060–00038–1)	50.00	Jan. 1, 2006
13	(869–060–00039–9)	55.00	Jan. 1, 2006
14 Parts:			
1–59	(869–060–00040–2)	63.00	Jan. 1, 2006
60–139	(869–060–00041–1)	61.00	Jan. 1, 2006
140–199	(869–060–00042–9)	30.00	Jan. 1, 2006
200–1199	(869–060–00043–7)	50.00	Jan. 1, 2006
1200–End	(869–060–00044–5)	45.00	Jan. 1, 2006
15 Parts:			
0–299	(869–060–00045–3)	40.00	Jan. 1, 2006
300–799	(869–060–00046–1)	60.00	Jan. 1, 2006
800–End	(869–060–00047–0)	42.00	Jan. 1, 2006
16 Parts:			
0–999	(869–060–00048–8)	50.00	Jan. 1, 2006
1000–End	(869–060–00049–6)	60.00	Jan. 1, 2006
17 Parts:			
1–199	(869–060–00051–8)	50.00	Apr. 1, 2006
200–239	(869–060–00052–6)	60.00	Apr. 1, 2006
240–End	(869–060–00053–4)	62.00	Apr. 1, 2006
18 Parts:			
1–399	(869–060–00054–2)	62.00	Apr. 1, 2006
400–End	(869–060–00055–1)	26.00	[6] Apr. 1, 2006
19 Parts:			
1–140	(869–060–00056–9)	61.00	Apr. 1, 2006
141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
200–End	(869–060–00058–5)	31.00	Apr. 1, 2006
20 Parts:			
1–399	(869–060–00059–3)	50.00	Apr. 1, 2006
400–499	(869–060–00060–7)	64.00	Apr. 1, 2006
500–End	(869–060–00061–5)	63.00	Apr. 1, 2006
21 Parts:			
1–99	(869–060–00062–3)	40.00	Apr. 1, 2006
100–169	(869–060–00063–1)	49.00	Apr. 1, 2006
170–199	(869–060–00064–0)	50.00	Apr. 1, 2006
200–299	(869–060–00065–8)	17.00	Apr. 1, 2006
300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
500–599	(869–060–00067–4)	47.00	Apr. 1, 2006
600–799	(869–060–00068–2)	15.00	Apr. 1, 2006
800–1299	(869–060–00069–1)	60.00	Apr. 1, 2006
1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[7] Apr. 1, 2006
23	(869–060–00073–9)	45.00	Apr. 1, 2006
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–060–00095–0)	28.00	Apr. 1, 2006
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–060–00098–4)	12.00	[5] Apr. 1, 2006
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[8] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[8] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[10] Oct. 1, 2005
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
*166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
*200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–060–00214–6)	11.00	[9] Oct. 1, 2006
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[9] Oct. 1, 2006
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
Individual copies		4.00	2006
Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.