Federal Register

4–9–10 Friday
Vol. 75 No. 68 Apr. 9, 2010

Pages 18047–18376

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

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

Printed on recycled paper.

Contents

Federal Register

Vol. 75, No. 68

Friday, April 9, 2010

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Statement of Organization, Functions, and Delegations of Authority, 18219–18228

Agriculture Department
See Commodity Credit Corporation
See Forest Service
NOTICES
Meetings:
Hood/Williamette Resource Advisory Committee (RAC), 18144

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response, 18214

Coast Guard
RULES
Drawbridge Operation Regulation:
Mermentau River, Grand Chenier, LA, 18055–18056
Regulated Navigation Areas:
Bars Along the Coasts of Oregon and Washington; Correction, 18055
Safety Zones:
Fireworks Display, Patuxent River, Solomons Island Harbor, MD, 18056–18058
Patapsco River, Northwest and Inner Harbors, Baltimore, MD, 18058–18061

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 18163–18165

Commodity Credit Corporation
NOTICES
Wetlands Reserve Enhancement Program, 18146–18151

Consumer Product Safety Commission
NOTICES
Meetings:
Chronic Hazard Advisory Panel on Phthalates, 18165–18166

Defense Department
See Engineers Corps
See Navy Department
RULES
TRICARE:
Relationship between the TRICARE Program and Employer-Sponsored Group Health Coverage, 18051–18055
PROPOSED RULES
Health Care Eligibility Under the Secretarial Designee Program and Related Special Authorities, 18138–18142
NOTICES
Meetings:
Federal Advisory Committee; Board of Regents of Uniformed Services University of Health Sciences, 18166

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18168–18170
Applications for New Awards (FY 2010):
Race to the Top Fund Assessment Program, 18171–18185
Ready-to-Learn Television Program; Correction, 18170–18171
Proposed Priorities:
Disability and Rehabilitation Research Projects and Centers Program; Rehabilitation Engineering Research Centers, 18185–18189

Election Assistance Commission
NOTICES
Request for Substantive Comments:
Procedural Manual for the Election Assistance Commission's Pilot Voting System Testing and Certification Program Manual, 18189

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Baseload Power Plant, East Kentucky Power Cooperative, Inc., Clark County, KY, 18166–18167

Environmental Protection Agency
RULES
Approval and Promulgation of Air Quality Implementation Plans:
Texas; Control of Air Pollution from Motor Vehicles, 18061–18068
Revisions to California State Implementation Plan:
Sacramento Metropolitan Air Quality Management District, 18068–18070
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Texas; Control of Air Pollution from Motor Vehicles, 18142–18143
Revisions to California State Implementation Plan:
Sacramento Metropolitan Air Quality Management District, 18143

NOTICES
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 18204–18205
Meetings:
External Peer Review; Using Probabilistic Methods to Enhance Role of Risk Analysis in Decision-Making, 18205–18206
Total Coliform Rule Revisions; Stakeholder Outreach, 18205

Federal Accounting Standards Advisory Board
NOTICES
Issuance of Statement of Federal Financial Accounting Standard 37, Social Insurance:
Additional Requirements for Managements Discussion and Analysis and Basic Financial Statements, 18208

Federal Aviation Administration
RULES
Amendment of Class D Airspace:
Hollywood, FL, 18047
Amendment of Low Altitude Area Navigation Route T–254:
Houston, TX, 18047–18048
PROPOSED RULES
Function and Reliability Flight Testing for Turbine–powered Airplanes Weighing 6,000 Pounds or Less, 18134–18138
NOTICES
Passenger Facility Charge Database System for Air Carrier Reporting, 18255–18256
Petition for Exemption; Summary of Petition Received, 18256

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18206–18207

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 18207

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 18070–18091
Final Flood Elevation Determinations, 18091–18095

Federal Energy Regulatory Commission
NOTICES
Applications:
City of Raleigh; Community Hydro, LLC, 18191–18192
New Jersey Water Supply Authority, 18190–18191
Northern Illinois Hydropower, LLC, 18193–18194
Riverbank Minnesota, LLC, 18189–18190, 18193
Tennessee Gas Pipeline Co., 18190
Vermont Marble Power Division of Omya Inc., 18192–18193
Combined Notice of Filings, 18194–18196
Environmental Impact Statements; Availability, etc.:
CenterPoint Energy Gas Transmission Co.; Proposed Line L Abandonment Project, 18198–18200
Questar Overthrust Pipeline Co.; Proposed Mainline 133 Loop Expansion Project, 18196–18198
Filings:
Enterprise Texas Pipeline LLC, 18200
Monroe Gas Storage Co., LLC, 18200–18201
Wisconsin Electric Power Co., 18201
Initial Market-Based Rate Filings Include Request for Blanket Section 204 Authorization:
Big Horn II Wind Project, LLC; Supplemental, 18201
Juniper Canyon Wind Power, LLC; Supplemental, 18201–18202
Vantage Wind Energy, LLC; Supplemental, 18202
Meetings:
Indo–U.S. Regulatory Workshop, 18202
Petitions for Declaratory Orders:
Desert Southwest Power, LLC, 18203
Grassland Renewables Energy LLC, 18202–18203
Settlement Agreements and Soliciting Comments:
City of Seattle; Public Utility District No. 1 of Pend Orielle County, 18203–18204

Federal Highway Administration
NOTICES
Final Federal Agency Actions on Proposed Highway:
California, 18253–18254

Federal Motor Carrier Safety Administration
NOTICES
Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System:
Implementation of a New Carrier Safety Measurement System, 18256–18259

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Board Approval Under Delegated Authority, 18208–18209

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Designation of Critical Habitat for Oregon Chub; Correction, 18107–18110
NOTICES
Endangered and Threatened Wildlife and Plants:
5-Year Status Reviews of 10 Southeastern Species, 18233–18234
5-Year Status Reviews of 15 Caribbean Species, 18232–18233
Paiute Cutthroat Trout Restoration Project:
Alpine County, CA, 18235–18236

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Procedures for Safe and Sanitary Processing and Importing of Fish and Fishery Products, 18211–18213
Threshold of Regulation for Substances Used in Food-Contact Articles, 18209–18210
Determination of Regulatory Review Period for Purposes of Patent Extension:
MOZOBIL, 18213
Public Educational Forum:
Drug and Medical Device Forum on Food and Drug Administration Drug and Device Requirements and Supplier Controls, 18219

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Kemmerer Ranger District, Bridger–Teton National Forest, Wyoming Kemmerer Grazing and Rangeland Vegetation Management Project, 18144–18145
Meetings:
Eastern Arizona Counties Resource Advisory Committee, 18145–18146
South Central Idaho Resource Advisory Council, 18146
Tehama County Resource Advisory Committee, 18146

Government Printing Office
NOTICES
Meetings:
Depository Library Council to the Public Printer, 18209

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Change in Definitions and Modification to Neighborhood Stabilization Program, 18228–18231
Federal Property Suitable as Facilities to Assist the Homeless, 18231

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office
NOTICES
Central Utah Project Completion Act, 18231–18232

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental Impact Statements; Availability, etc.:
Flood Control Improvements and Partial Levee Relocation; United States Section, et al., 18238–18239

International Trade Administration
NOTICES
Amended Final Results Pursuant to Final Court Decision:
Certain Preserved Mushrooms from India, 18151–18152
Extension of Time Limit for Final Results of Countervailing Duty Administrative Review:
Certain Hot-Rolled Carbon Steel Flat Products from India, 18152
Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review:
Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan, 18153
Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review:
Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 18153–18154
Initiation of Administrative Reviews and Requests for Revocation in Part of Antidumping Duty Orders:
Certain Frozen Warmwater Shrimp from Socialist Republic of Vietnam and People's Republic of China, 18154–18159

International Trade Commission
NOTICES
Commission Issuances of General Exclusion Orders, Limited Exclusion Orders, and Remand Orders:
Certain Coaxial Cable Connectors and Components thereof and Products Containing Same; Extension of Target Date, 18236–18237
Full Five-Year Review Concerning the Antidumping Duty Order:
Natural Bristle Paint Brushes from China, 18237–18238
Meetings; Sunshine Act, 18238
Revised Schedule for the Subject Review:
Ironing Tables and Certain Parts thereof from China, 18238

Justice Department
NOTICES
Proposed Consent Decrees, 18239–18240

Land Management Bureau
NOTICES
Filing of Plat of Survey:
Eastern States, 18234
Meetings:
John Day/Snake Resource Advisory Council, 18235

Maritime Administration
RULES
America's Marine Highway Program, 18095–18107

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

National Aeronautics and Space Administration
NOTICES
Meetings:
NASA Advisory Council, 18240

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 18217–18218
National Center for Complementary and Alternative Medicine, 18217–18218
National Center for Research Resources, 18216
National Institute of Allergy and Infectious Diseases, 18215
National Institute of Biomedical Imaging and Bioengineering, 18216–18217
National Institute of Child Health and Human Development, 18217
National Institute of Diabetes and Digestive and Kidney Diseases, 18215–18216
National Institute of General Medical Sciences, 18218
National Institute of Neurological Disorders and Stroke, 18214
Office of the Director, 18214–18215

National Oceanic and Atmospheric Administration
RULES
Antarctic Marine Living Resources:
Use of Centralized-Vessel Monitoring System and Importation of Toothfish; Re-export and Export of Toothfish, etc., 18110–18113
Fisheries of the Northeastern United States:
Northeast Multispecies Fishery (Framework Adjustment 44), 18356–18375
Magnuson–Stevens Act Provisions; Fisheries of the Northeastern United States:
Northeast Multispecies Fishery (Amendment 16), 18262–18353
Northeast Multispecies Fishery; 2010 Sector Operations Plans and Contracts, etc., 18113–18132
NOTICES
Issuance of Permit Amendment:
Marine Mammals, 18160
Small Takes of Marine Mammals Incidental to Specified Activities:
Antioch Bridge Seismic Retrofit Project, CA, 18160–18163

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Applicant Survey, 18240
Meetings:
Proposal Review Panel for Materials Research, 18240–18241

Navy Department
NOTICES
Meetings:
U.S. Naval Academy Board of Visitors, 18167–18168

Nuclear Regulatory Commission
NOTICES
Draft Regulatory Guide:
Issuance; Availability, 18241–18242
Environmental Impact Statements; Availability, etc.:
Florida Power and Light; St. Lucie (Units 1 and 2); Independent Spent Fuel Storage Installation, 18242–18244

Personnel Management Office
PROPOSED RULES
Pay for Sunday Work, 18133–18134

Postal Regulatory Commission
NOTICES
New Postal Products, 18244–18245

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18246
Joint Industry Plan:
Filing and Order Granting Temporary Effectiveness of Amendment to Plan Establishing Procedures, etc., 18246–18247
Meetings; Sunshine Act, 18247–18248
Self-Regulatory Organizations; Proposed Rule Changes:
NASDAQ Stock Market LLC, 18250–18251
NYSE Arca, Inc., 18248–18249

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18245
Disaster Declaration:
Delaware, 18245
Public Federal Regulatory Enforcement Fairness Hearing:
Region IX Regulatory Fairness Board, 18245–18246

Social Security Administration
NOTICES
Privacy Act of 1974, as Amended; Computer Matching Program, 18251–18252

State Department
NOTICES
Culturally Significant Object Imported for Exhibition Determinations:
Through African Eyes; The European in African Art, 1500 – Present, 18252
Meetings:
U.S. Advisory Commission on Public Diplomacy, 18252

Surface Mining Reclamation and Enforcement Office
RULES
Oklahoma Regulatory Program, 18048–18051

Surface Transportation Board
NOTICES
Acquisition Exemption:
R. J. Corman Railroad Property, LLC; NC Railroad, Inc., 18253
Lease and Operation Exemption:
R. J. Corman Railroad Company/Bardstown Line; R. J. Corman Railroad Property, LLC, 18254

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
See Surface Transportation Board
See Transportation Statistics Bureau
NOTICES
Aviation Proceedings:
Agreements filed the week ending March 27, 2010, 18253

Transportation Statistics Bureau
NOTICES
Meetings:
Advisory Council on Transportation Statistics, 18254–18255

Treasury Department
NOTICES
Meetings:
Debt Management Advisory Committee, 18259

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 18262–18353

Part III
Commerce Department, National Oceanic and Atmospheric Administration, 18356–18375

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
Proposed Rules:
550 18133

14 CFR
71 (2 documents) 18047
Proposed Rules:
21 18134

15 CFR
902 18262

30 CFR
936 18048

32 CFR
199 18051
Proposed Rules:
108 18138

33 CFR
117 18055
165 (3 documents) 18055, 18056, 18058

40 CFR
52 (2 documents) 18061, 18068
Proposed Rules:
52 (2 documents) 18142, 18143

44 CFR
65 (11 documents) 18070, 18072, 18073, 18074, 18076, 18079, 18082, 18084, 18086, 18088, 18090
67 18091

46 CFR
393 18095

50 CFR
17 18107
300 18110
648 (3 documents) 18113, 18262, 18356

Rules and Regulations

Federal Register
Vol. 75, No. 68
Friday, April 9, 2010

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0300; Airspace Docket No. 10–ASO–17]

Amendment of Class D Airspace; Hollywood, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical amendment.

SUMMARY: This action makes a minor correction to a final rule published in the **Federal Register** on July 23, 1997, amending Class D airspace at North Perry Airport, Hollywood, FL.

DATES: *Effective Date:* 0901 UTC. May 10, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

In a final rule published in the **Federal Register** July 23, 1997 (62 FR 39430) Airspace Docket 97–ASO–7, the airspace description for North Perry Airport, Hollywood, FL, incorrectly referenced the Miami, FL, Class B airspace area exclusion as Class D airspace area. This action corrects that error.

The FAAs National Aeronautical Charting Office correctly charted the Class B airspace area exclusion. Accordingly, since this is an administrative change, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553 (b) are unnecessary.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Technical Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

■ 1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Hollywood, FL [Amended]

Hollywood, North Perry Airport, FL
(Lat. 26°00′05″ N., long 80°14′26″ W.)
Opa Locka Airport
(Lat. 25°54′26″ N., long 80°16′48″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the North Perry Airport; excluding the portion north of the north boundary of the Miami, FL, Class B airspace area and that portion south of a line connecting the 2 points of intersection with a 4.3-mile circle centered on the Opa Locka Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on April 1, 2010.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–8014 Filed 4–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0015; Airspace Docket No. 09–ASW–18]

RIN 2120–AA66

Amendment of Low Altitude Area Navigation Route T–254; Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends low altitude Area Navigation (RNAV) route T–254 in the Houston, TX, terminal area by eliminating the segment between the Centex, TX, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the College Station, TX, VORTAC. The FAA is taking this action to eliminate a portion of T–254 that is no longer needed; thus, enhancing safety and the efficient use of the navigable airspace in the Houston, TX, terminal area.

DATES: *Effective Dates:* 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, February 9, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend low altitude Area Navigation (RNAV) route T–254 in the Houston, TX, terminal area (75 FR 6319). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending area navigation route T–254

in the Houston, TX, terminal area. Specifically, the FAA is eliminating the route segment of T–254 between the Centex, TX, VORTAC and College Station, TX, VORTAC. This action eliminates unnecessary duplication with an existing route segment of Federal Airway V–565 to enhance safety and facilitate the efficient use of the navigable airspace for en route instrument flight rules operations transitioning around the Houston Class B terminal airspace area.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV route listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a low altitude Area Navigation route (T–254) in the Houston, TX, terminal area.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraphs 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 Area Navigation Routes

* * * * *

T–254 College Station, TX to Lake Charles, LA [Amended]

College Station, TX (CLL) VORTAC
(Lat. 30°36′18″ N., long. 96°25′14″ W.)
EAKES, TX WP
(Lat. 30°33′18″ N., long. 95°18′29″ W.)
CREPO, TX WP
(Lat. 30°16′54″ N., long. 94°14′43″ W.)
Lake Charles, LA (LCH) VORTAC
(Lat. 30°08′29″ N., long. 93°06′20″ W.)

Issued in Washington, DC, on April 1, 2010.

Ellen Crum,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–8015 Filed 4–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SATS No. OK–032–FOR; Docket No. OSM–2008–0023]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Oklahoma Department of Mines (ODM, Oklahoma, or department) made revisions to its rules regarding circumstances under which a notice of violation may have an abatement period greater than 90 days. Oklahoma revised its program at its own initiative to improve operational efficiency.

DATES: *Effective Date:* April 9, 2010.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office, and Telephone: (918) 581–6430, E-mail: *aclayborne@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act, and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in

the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning the Oklahoma program and program amendments at 30 CFR 936.10, 936.15 and 936.16.

II. Submission of the Amendment

By letter dated November 26, 2008, (Administrative Record No. OK–998), Oklahoma sent us amendments to its approved regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma submitted these amendments at its own initiative. Oklahoma proposed a revision to the notices of violation rules as well as the deletion of rules concerning the appeals procedures and appeals board.

We announced receipt of Oklahoma's amendments in the January 9, 2009, **Federal Register** (74 FR 868). In the same document, we opened the public comment period and the public was provided an opportunity to submit comments or request a public hearing on the adequacy of the amendments. We did not hold a public meeting because no one requested one. The public comment period ended February 9, 2009. We did not receive any comments.

During our review of the amendment, we identified concerns regarding Oklahoma's proposed deletion of its Appeals procedures section 460:20–5–13. We notified Oklahoma of these concerns by letter dated December 11, 2008, and by e-mail dated February 11, 2009, (Administrative Record Nos. OK–998.02, and OK–998.08).

Oklahoma responded by letters dated January 8, 2009; July 7, 2009; and November 10, 2009 (Administrative Record Nos. OK–998.03, OK–998.09, and OK–998.11). Oklahoma submitted another letter, December 22, 2009, (Administrative Record No. OK–998.12) withdrawing the appeals procedures and appeals board sections from its proposed amendment and committing to resubmitting a separate formal amendment regarding these two sections at a later date.

Withdrawal of the proposed amendments related to appeals procedures at the appeals board leaves Oklahoma's approved regulatory program no less effective than the Federal regulations at 30 CFR 843.12(f)(1). For this reason, we did not reopen the public comment period.

III. OSM's Finding

The following are our findings concerning the submitted amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

Section 460:20–59–4—Notices of Violation

Oklahoma proposed to revise its regulations at OAC 460:20–59–4—Notices of violation, by removing portions of language in subsection 460:20–59–4(f)(1) and adding new language at subsection 460:20–59–4(f)(2) that is consistent with the Federal regulations at 30 CFR 843.12(f)(1). The circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are: (1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee; (2) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit revision which abates an outstanding violation and which includes no other changes to permit design or plans, but such revision approval has not or will not be issued within 90 days for reasons not within the control of the permittee.

The Federal regulations at 30 CFR 843.12(f) identify circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days. They are: (1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee; (2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy; (3) Where the permittee cannot abate within 90 days due to a labor strike; (4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or (5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

Oklahoma feels, and we agree, that this revision will better clarify the circumstance under which an abatement period may exceed 90 days while preventing excessive delays due to permit revisions containing unrelated issues that would require lengthy review periods. Their amendment will continue to allow an abatement period greater than 90 days related to a permit renewal but will only allow an abatement period greater than 90 days for an outstanding permit revision if the revision is related only to the violation issues and does not contain unrelated items that could excessively delay the review process.

We find that the changes by Oklahoma are no less effective than the Federal regulations; therefore, we are approving them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On December 3, 2008, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments from various agencies with an actual or potential interest in Oklahoma's Appeals procedures, Appeals board, and Notices of violation (Administrative Record No. OK–998.04), we received comments from one agency, the Oklahoma Historical Society. The agency had no objections to Oklahoma's proposed regulatory program changes.

Environmental Protection Agency (EPA) Concurrence and Comments

We are required to get a written concurrence from the Environmental Protection Agency (EPA) under 30 CFR 732.17(h)(11)(ii), for those provisions of Oklahoma's program amendments that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On December 3, 2008, and February 21, 2009, we requested comments on the proposed amendments from the EPA (Administrative Record Nos. OK–998.04). The EPA did not respond to our request.

V. OSM's Decision

Based on the above findings, we are approving Oklahoma's revision to its Notices of violation submitted on November 26, 2008.

To implement this decision, we are amending the Federal regulations at 30 CFR part 936 which codifies decisions concerning the Oklahoma program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its

purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This determination is based on the fact that the Oklahoma program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Oklahoma program has no effect on Federally-recognized Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a statement of energy effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 16, 2010.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

Editorial Note: This document was received in the Office of the Federal Register on April 6, 2010.

■ For the reasons set out in the preamble, 30 CFR part 936 is amended as set forth below:

PART 936—OKLAHOMA

■ 1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 936.15 is amended in the table by adding a new entry in chronological order by "date of final publication" to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
November 26, 2008	April 9, 2010	Notice of violations: Section 460:20–59–4.

[FR Doc. 2010–8175 Filed 4–8–10; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2007–HA–0078; RIN 0720–AB17]

TRICARE; Relationship Between the TRICARE Program and Employer-Sponsored Group Health Coverage

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements section 1097c of Title 10, United States Code, as added by section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll or to terminate enrollment in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Benefits offered through cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible as long as the plan treats all similarly situated employees eligible for benefits the same and does not illegally take TRICARE eligibility into account. TRICARE supplemental insurance plans, because they are limited to TRICARE beneficiaries exclusively, are generally impermissible. Properly documented non-employer contributed TRICARE supplemental plans, however, are allowed.

DATES: Effective June 18, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Larkin, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Background

Section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) added section 1097c to Title 10, United States Code. Section 1097c prohibits employers from offering financial or other incentives to certain TRICARE-eligible employees (essentially retirees and their family members) to not enroll in an employer-offered GHP in the same manner as employers are currently prohibited from offering incentives to Medicare-eligible employees under section 1862(b)(3)(C) of the Social Security Act (42 U.S.C. 1395y(b)(3)(C)). Many employers, including state and local governments, have begun to offer their employees who are TRICARE-eligible a TRICARE supplement as an incentive not to enroll in the employer's primary GHP. These actions shift thousands of dollars of annual health costs per employee to the Defense Department, draining resources from higher national security priorities. TRICARE is, as is Medicare, a secondary payer to employer-provided health insurance. In all instances where a TRICARE beneficiary is employed by a public or private entity and elects to participate in a GHP, reimbursements for TRICARE claims will be paid as a secondary payer to the TRICARE beneficiary's employer-sponsored GHP. TRICARE is not responsible for paying first as it relates to reimbursements for a TRICARE beneficiary's health care and the coordination of benefits with employer-sponsored GHPs.

An identified employer-sponsored health plan will be the primary payer and TRICARE will be the secondary payer. TRICARE will generally pay no more than the amount it would have paid if there were no employer GHP. As applicable to both the Medicare and TRICARE secondary payer programs, the term "group health plan" means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. It should be noted that by including any plan of an employer to provide health care to employees, this definition is very broad.

The purpose of the prohibition on incentives not to enroll in employer-sponsored GHPs is to prevent employers from shifting their responsibility for their employees onto the Federal taxpayers. Certain common employer benefit programs do not constitute improper incentives under the law. For example, the general rule is that an employer-funded benefit offered through an employer's cafeteria plan that comports with section 125 of the Internal Revenue Code would not be considered improper incentive, as long as it is not a TRICARE exclusive benefit. A cafeteria plan, as defined by the Internal Revenue Code, 26 U.S.C. 125(d), is a written plan under which all participants are employees and the participants may choose among two or more benefits consisting of cash and qualified benefits. Employers who adhere to the requirements of section 125 and offer all similarly situated employees without regard to TRICARE eligibility a choice between health insurance and cash payment equivalents are not considered in violation of 42 U.S.C. 1395y(b)(3)(C). Therefore, if a TRICARE beneficiary elects the cash-payment option as a benefit offered via the employer's cafeteria plan, one which meets section 125 requirements, then the employer would not be in violation of these provisions. In general, 10 U.S.C. 1097c prohibits employer-endorsed TRICARE supplemental plans as an option for health coverage under an employer-sponsored GHP to TRICARE-eligible beneficiaries. This type of benefit cannot be offered as part of a cafeteria plan because the employer, by endorsing this type of plan, effectively offers an improper incentive targeted only at TRICARE beneficiaries for not enrolling in the employer's main health plan option or options.

Section 1097c does not impact TRICARE supplemental plans that are not offered by an employer but are sold by an insurer and/or beneficiary association working in conjunction with an insurer. Such non-employer-sponsored TRICARE supplemental plans will continue to be expressly

excluded as double coverage under 32 CFR 199.2(b) and 199.8(b)(4)(ii), so that TRICARE is the primary payer and the TRICARE supplemental plan is the secondary payer.

II. Public Comments

The proposed rule was published in the **Federal Register** on March 24, 2008, for a 60-day comment period. We received 21 comments. We thank those who provided comments. Specific matters raised by those who submitted comments are summarized below.

Comment: One commenter approved of the rule but suggested the text be clarified to refer more precisely to a "cafeteria plan" as a vehicle for offering benefits to employees, rather than as a benefit itself. Further, this commenter suggested our references to "benefits offered to all employees" overlook that benefits are oftentimes not offered to all employees due to their being in different divisions or geographic locations.

Response: We agree with the commenter. We have clarified our references to "cafeteria plan." Additionally, references to "all employees" have been changed to "all similarly situated employees."

Comment: Several commenters urged that we revise the rule to permit employers to offer TRICARE supplemental plans that are not paid for in whole or in part by the employer and are not endorsed by the employer. Plans such as this, sometimes referred to as "voluntary plans," might allow employees to purchase TRICARE supplements with pre-tax dollars.

Response: We agree that this is a reasonable proposal, allowing the employer to have some involvement in offering a TRICARE-exclusive plan. Thus, we have revised the rule to make clear that the prohibition on employer incentives does not include TRICARE supplemental plans when it is properly documented that the employer does not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit; the employer's only involvement is providing the administrative support for the benefits under the cafeteria plan.

Comment: Several commenters reported they had been inappropriately excluded from benefits due to their employers' misunderstanding of the law. For example, several commented that their employers stopped allowing TRICARE eligibles from taking advantage of a permissible cash option under a proper cafeteria plan. Another commenter who similarly lost a medical-insurance stipend applauded the rule as she believes its implementation will correct her employer's misunderstanding since it clearly states cash options are permissible when offered to all similarly situated employees under a proper cafeteria plan.

Response: We hope this final rule will eliminate these misunderstandings. This regulation does not prohibit TRICARE-eligible employees from electing a cash option offered to all similarly situated employees under a proper cafeteria plan.

Comment: One commenter, an active duty service member, reported that his daughter's employer ceased funding her 403(b) benefit and required her to acquire the employer health insurance plan in order to comply with this law.

Response: Again, nothing of the sort is required by the law or this regulation. Further, both the statute and this regulation expressly define a TRICARE-eligible employee as a person who is eligible for TRICARE coverage under 10 U.S.C. 1086. This essentially applies to retirees and their family members and does not include dependents of active duty personnel.

Comment: One commenter offered a different numbering scheme for the insertion of this rule into section 1097(c) of Title 10, U.S. Code.

Response. Section 1097c is a new, complete section and will not be added as subsection 1097(c) under section 1097.

Comment: One commenter stated military retirees should have the same access to civilian employer cafeteria plan offerings as their fellow employees.

Response: We agree that military retirees should have the same access to employer benefit plans as their civilian counterparts. The rule makes clear that employer-sponsored benefits offered to all similarly situated employees do not violate 10 U.S.C. 1097c or this regulation.

Comment: Several commenters believe section 707 exceeds what is necessary to ensure improper incentives are not provided by employers; they feel a qualifying cafeteria plan which offers a TRICARE supplement is not an improper incentive.

Response: The statute is designed to stop employers from targeting TRICARE beneficiaries with incentives designed to shift employers' financial responsibility for health coverage to federal taxpayers. The Conference Report accompanying the enactment of section 1097c made clear that supplemental insurance plans offered by employers through cafeteria plans are permissible under 1097c only if they are "non-TRICARE-exclusive employer-provider health care incentives." TRICARE-exclusive plans, even if offered under cafeteria plans, are not allowed (except for plans offered that comport with the new provision regarding non-contributory plans).

Comment: One commenter questioned if the employer could provide a Health Reimbursement Arrangement (HRA) in lieu of a traditional employer-sponsored health plan. An additional commenter questioned how this rule intersects with the McNamara-O'Hara Service Contract Act (SCA).

Response: An HRA is an employer sponsored plan. HRAs generally are classified as group health plans, and only employers can make contributions to HRAs. If the incentive, such as an HRA, is available to and can be used by all similarly situated employees (not limited to TRICARE beneficiaries), it does not violate this provision. Further, cash payments or other bona fide fringe benefits may properly be offered under the SCA and otherwise in lieu of health care coverage as long as the employer does not consider TRICARE eligibility when formulating the cash payment or fringe benefits options.

Comment: Several commenters criticized the proposed rule on the grounds that it results in a lessening of total benefits for military retirees who could otherwise receive TRICARE Standard coverage from DoD and a TRICARE supplemental plan from the employer, both without paying premiums and together resulting in comprehensive health care with no out-of-pocket costs.

Response: We acknowledge that prior to the enactment of section 1097c, an employer could offer TRICARE-eligible employees TRICARE supplemental plans that would save money for both the employer and the employee. But this was accomplished by shifting costs to the employee's former employer, the United States Government and the federal taxpayers. Health care financing in the United States is, of course, a complicated enterprise but in general is organized as a benefit of employment for which most employers accept primary responsibility. Usually employees also contribute to this coverage in the form of paying part of the premiums. In cases in which there is a former employer from whom benefits are also available, it is not typically assumed that these replace the responsibility of the current employer. With respect to military retirees, they have a very good health care benefit under TRICARE provided by their former employer. Under the law there are some out-of-pocket costs in the form of deductibles and copayments; there is

no entitlement to free, comprehensive care. Taking all of these factors together, the question becomes: What are the rules for allocating financial responsibilities among the three players—the current employer, the former employer (the U.S. Government), and the employee/retiree? This statute provides that the employer and the U.S. Government let the employee/retiree choose between his or her respective health care options, placing primary responsibility with either the employer or the Government. Neither the employer nor the Government should seek to shift the responsibility to the other. In other words, both the employer and Government should offer the same benefits they otherwise would offer and let the employee decide. That is what both the statute and regulation require. Although it is true this does not necessarily maximize the financial gain of the military retiree involved, it is a fair allocation of financial responsibility, consistent with prevailing health care financing law, policy, and practice in the United States.

III. Provisions of Final Rule

The final rule would add to § 199.8 of the TRICARE Regulation a new paragraph (d)(6) concerning the statutory prohibition against financial and other incentives not to enroll in a group health plan. The final rule is similar to the proposed rule except for the refinement and revisions noted above. DoD considered alternatives to the final rule within the bounds of the statute and Congressional intent. The statute is specific in requiring DoD to apply the Medicare rules concerning employer incentives to rely on Medicare, but does give DoD authority to adopt exceptions. The legislative history establishes Congressional intent clearly to prohibit employer-sponsored TRICARE supplemental plans. DoD considered the alternative of applying the Medicare rules without exception, but decided to adopt an exception, discussed above, when the employer's only involvement is providing the administrative support for the benefits under a cafeteria plan for a non-contributory TRICARE supplemental plan. Subparagraph (i) provides the general rule that an employer or other entity is prohibited from offering TRICARE beneficiaries financial or other benefits as incentives not to enroll in, or to terminate enrollment in a group health plan that is or would be primary to TRICARE. This prohibition applies in the same manner as the Medicare Secondary Payer law applies to incentives for a Medicare-eligible employee not to enroll in a group health plan that is or would be primary to Medicare.

Subparagraph (ii) states that this prohibition precludes offering to TRICARE beneficiaries an alternative to the employer primary plan unless the beneficiary has primary coverage other than TRICARE; or the benefit is offered under a proper cafeteria plan and is offered to all similarly situated employees, including non-TRICARE-eligible employees; or the benefit is offered under a cafeteria plan and, although offered only to TRICARE-eligible employees, the employer does not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit. The employer's only involvement is providing the administrative support for the benefits under the cafeteria plan, and the participation of the employee in the plan is completely voluntary.

Subparagraph (iii) requires documentation certifying the requirements for a non-contributory TRICARE supplemental plan is met in cases in which an employer provides that option, and that the certification will be provided upon request to the Department of Defense. In cases in which a question arises about a TRICARE supplemental plan offered by an employer, this documentation will provide a simple means to resolve that it was offered within the authorized exception to the general rule against TRICARE-exclusive benefits.

Subparagraph (iv) provides that enforcement of this prohibition is afforded through civil monetary penalties not to exceed $5,000 for each violation, investigative authorities of the Department of Defense Inspector General, recourse under the Debt Collection Improvement Act, and any other authority provided by law.

Subparagraph (v) provides definitions. The term "employer" includes any State or unit of local government and any employer that employs at least 20 employees. The term "group health plan" is defined in reference to the Internal Revenue Code. The term "TRICARE-eligible employee" means a covered beneficiary under 10 U.S.C. 1086, essentially military retirees and their eligible family members. The term "similarly situated" means sharing common attributes, such as part-time employees, or other bona fide employment-based classifications consistent with the employer's usual business practice, but not including TRICARE eligibility as a permissible classification.

Subparagraph (vi) provides that the Departments of Defense and Health and Human Services are authorized to enter into agreements to further carry out the new regulation.

IV. Regulatory Procedures

Executive Order 12866, "*Regulatory Planning and Review*"

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. In the proposed rule, we stated that this rule was an economically significant rule. This was based on a Congressional Budget Office (CBO) estimate during Congressional consideration of the underlying legislation that it would have an annual economic impact of $119 million in 2008 and $700 million over the 2008–2011 period. This was based on CBO's estimate that 50,000 retirees and their dependents would stop using TRICARE in favor of an employer-sponsored plan. Based on an assessment of data in the Defense Eligibility Enrollment Reporting System (DEERS) of retirees and their dependents under age 65 identified as having other health insurance, as well as recent beneficiary survey data, we now believe the CBO estimate was too high, and that a better estimate is that the statutory change implemented by this final rule will yield annual budget savings of $64 million for Fiscal Year 2010. Nonetheless, DoD will continue to treat this as an economically significant rule to maintain consistency with the proposed rule and because medical system cost growth in the future may raise the economic impact over the $100 million per year threshold.

The revised estimate is based on a DoD beneficiary survey conducted in October 2007 (three months before the effective date of section 707). Defense Enrollment Eligibility Reporting System (DEERS) data indicate that the average number of non-active duty family members (NADFMs) eligible for TRICARE, excluding Medicare eligibles, was 2,881,929 in FY09. Among these NADFMs, the October 2007 DoD survey indicated that 51 percent were offered OHI. Therefore, we estimate that 1,469,784 NADFM eligibles are currently offered OHI. Of those NADFMs offered OHI, the survey indicated that 53 percent took the OHI and 47 percent used TRICARE, prior the effect of Sec. 707. Therefore, we estimate that 690,798 current NADFM eligibles were offered OHI but instead

would have used TRICARE, prior to the effect of Sec. 707.

The survey also asked this group (who were offered OHI but used TRICARE) whether their employer (or spouse's employer) paid them a bonus for declining the employer's health plan, and the survey indicated that 4 percent of this group were, in fact, paid to decline OHI. Therefore, we estimate that 27,632 TRICARE eligibles were paid by an employer to decline the employer's coverage, prior to the effective date of section 707. Of the 690,798 NADFMs who declined OHI prior to sec. 707, 663,166 did so without a financial incentive from their employer (because they perceived TRICARE as less expensive, a better benefit, and/or for other reasons). These NADFMs who declined their employer plan but were not paid to do so represent 46 percent of the 1,442,152 NADFMs who were offered OHI without a financial incentive to decline it (prior to Sec. 707). The other 54 percent of NADFMs who were offered OHI, without a financial incentive to decline it, took the OHI. Combining these two points, we estimate that with the section 707 prohibition of employer incentives, 54 percent of the 27,632 NADFMs, or 14,921 NADFMs, would shift to OHI rather than using TRICARE. The other 46 percent, or 12,711 NADFMs, would continue as TRICARE users even without the employer financial incentive, just as 46 percent of the NADFMs who do not have an employer financial incentive opt for TRICARE rather than OHI.

An updated analysis of DoD's cost and population data for FY09 indicates that the average MHS cost per NADFM user under age 65 was $3,975 (in FY09 dollars). After adjusting for inflation to FY10, we estimate that the current year (FY10) cost per NADFM user is $4,293. Multiplying this cost per user by the 14,921 NADFMs who would shift to OHI rather than using TRICARE, due to section 707, yields an annual estimated cost impact of $64.1 million in savings for Fiscal Year 2010.

Based on a trend of seven percent inflation offset by a projected two percent annual decrease in non-active duty family members under age 65, we estimate the following impact.

ESTIMATED ANNUAL IMPACT

Fiscal year	Savings (in millions)
2010	$64.1
2011	67.3
2012	70.6
2013	74.2
2014	77.9

ESTIMATED ANNUAL IMPACT—Continued

Fiscal year	Savings (in millions)
2015	81.8

Congressional Review Act, 5 U.S.C. 801, et seq.

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect of the economy of $100 million or more or have certain other impacts. For the reasons stated above, DoD is treating this as a major rule under the Congressional Review Act.

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

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not have a significant impact on a substantial number of small entities for purposes of the RFA.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This rule will impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). (Ref: **Federal Register** Vol. 73, No. 251, December 31, 2008).

Executive Order 13132, "*Federalism*"

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

Sec. 202, Public Law 104–4, "*Unfunded Mandates Reform Act*"

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS) [AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.8 is amended by adding a new paragraph (d)(6) to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) * * *

(6) *Prohibition against financial and other incentives not to enroll in a group health plan*—(i) *General rule.* Under 10 U.S.C. 1097c, an employer or other entity is prohibited from offering TRICARE beneficiaries financial or other benefits as incentives not to enroll in, or to terminate enrollment in, a group health plan that is or would be primary to TRICARE. This prohibition applies in the same manner as section 1862(b)(3)(C) of the Social Security Act applies to incentives for a Medicare-eligible employee not to enroll in a group health plan that is or would be primary to Medicare.

(ii) *Application of general rule.* The prohibition in paragraph (d)(6)(i) of this section precludes offering to TRICARE beneficiaries an alternative to the employer primary plan unless:

(A) The beneficiary has primary coverage other than TRICARE; or

(B) The benefit is offered under a cafeteria plan under section 125 of the Internal Revenue Code and is offered to all similarly situated employees, including non-TRICARE eligible employees; or

(C) The benefit is offered under a cafeteria plan under section 125 of the Internal Revenue Code and, although offered only to TRICARE-eligible employees, the employer does not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit; the employer's only involvement is providing the administrative support for the benefits under the cafeteria plan, and the employee's participation in the plan is completely voluntary.

(iii) *Documentation.* In the case of a benefit excluded by paragraph (d)(6)(ii)(C) of this section from the

prohibition in paragraph (d)(6)(i) of this section, the exclusion is dependent on the employer maintaining in the employer's files a certification signed by the employer that the conditions described in paragraph (d)(6)(ii)(C) of this section are met, and, upon request of the Department of Defense, providing a copy of that certification to the Department of Defense.

(iv) *Remedies and penalties.* (A) Remedies for violation of this paragraph (d)(6) include but are not limited to remedies under the Federal Claims Collection Act, 31 U.S.C. 3701 *et seq.*

(B) Penalties for violation of this paragraph (d)(6) include a civil monetary penalty of up to $5,000 for each violation. The provisions of section 1128A of the Social Security Act, 42 U.S.C. 1320a–7a, (other than subsections (a) and (b)) apply to the civil monetary penalty in the same manner as the provisions apply to a penalty or proceeding under section 1128A.

(v) *Definitions.* For the purposes of this paragraph (d)(6):

(A) The term "employer" includes any State or unit of local government and any employer that employs at least 20 employees.

(B) The term "group health plan" means a group health plan as that term is defined in section 5000(b)(1) of the Internal Revenue Code of 1986 without regard to section 5000(d) of the Internal Revenue Code of 1986.

(C) The term "similarly situated" means sharing common attributes, such as part-time employees, or other bona fide employment-based classifications consistent with the employer's usual business practice. (Internal Revenue Service regulations at 26 CFR 54.9802–1(d) may be used as a reference for this purpose). However, in no event shall eligibility for or entitlement to TRICARE (or ineligibility or non-entitlement to TRICARE) be considered a bona fide employment-based classification.

(D) The term "TRICARE-eligible employee" means a covered beneficiary under section 1086 of title 10, United States Code, Chapter 55, entitled to health care benefits under the TRICARE program.

(vi) *Procedures.* The Departments of Defense and Health and Human Services are authorized to enter into agreements to further carry out this section.

* * * * *

Dated: April 6, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8162 Filed 4–8–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1017]

RIN 1625–AA11

Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington; Correction

Correction

In rule document 2010–4769 beginning on page 10687 in the issue of Tuesday, March 9, 2010, make the following correction:

§165.1325 [Corrected]

1. On page 10688, in §165.1325, in the first column, in paragraph (a)(12) "43°38′35″ N., 24°14′25″W."should read, "43°38′35″ N., 124°14′25″W."

[FR Doc. C1–2010–4769 Filed 4–8–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0203]

Drawbridge Operation Regulation; Mermentau River, Grand Chenier, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 82 swing span bridge across the Mermentau River, mile 7.1, at Grand Chenier, Cameron Parish, Louisiana. This deviation is necessary for electrical and mechanical repairs pertaining to the bridge's main span drive assembly and system components. This deviation allows the bridge to remain closed to navigation for approximately 10 weeks.

DATES: This deviation is effective from 7 a.m. on April 21, 2010, through 7 a.m. on June 30, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0203 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0203 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Kay Wade, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *Kay.B.Wade@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the swing span bridge across the Mermentau River at mile 7.1 in Grand Chenier, Cameron Parish, Louisiana. The closure is necessary in order to perform electrical and mechanical repairs pertaining to the bridge's main span drive assembly and system components. This maintenance is essential for the continued operation of the bridge.

The operating schedule for the bridge is in 33 CFR 117.480 and states the bridge opens on signal; except that, from 6 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given, for the passage of vessels. This deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. Wednesday, April 21, 2010, through 7 a.m. Thursday, July 1, 2010.

The vertical clearance of the swing span bridge in the closed-to-navigation position is 13.15 feet above Mean High Water, elevation 3.1 feet Mean Sea Level. Vessels are able to transit under the bridge during operations. There is an alternate navigation route via Grand Lake for vessels unable to pass under the bridge. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. Due to prior experience and coordination with waterway users, it has been determined that the closure will not have a significant effect on navigation.

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

deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 30, 2010.

David M. Frank,

Bridge Administrator.

[FR Doc. 2010–8096 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0179]

RIN 1625–AA00

Safety Zone; Fireworks Display, Patuxent River, Solomons Island Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon specified waters of Solomons Island Harbor, a tributary of the Patuxent River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from discharge barge located in Solomons Island, Calvert County, Maryland. This safety zone is intended to protect the maritime public in a portion of Solomons Island Harbor.

DATES: This rule is effective from 7:30 p.m. through 10:30 p.m. on April 16, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0179 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0179 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to public interest to delay the effective date of this rule. Delaying the effective date would be contrary to the safety zone's intended objectives since immediate action is needed to protect persons and vessels against the hazards associated with a fireworks display on navigable waters. Such hazards include premature detonations, dangerous projectiles and falling or burning debris.

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

Basis and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled event.

Discussion of Rule

To celebrate its 30th Year Anniversary Opening, the Tiki Bar at Solomons Island, Maryland will sponsor a fireworks display from a barge located adjacent to Molly's Leg in Solomons Island Harbor scheduled on Friday, April 16, 2010 at approximately 8:45 p.m.

The Coast Guard is establishing a temporary safety zone on certain waters of the Solomons Island Harbor, within a 100 yards radius of a fireworks discharge barge in approximate position latitude 38°19′21″ N, longitude 076°27′16″ W, located at Solomons Island Harbor, Maryland (NAD 1983). The temporary safety zone will be enforced from 7:30 p.m. through 10:30 p.m. on April 16, 2010. The effect of this temporary safety zone will be to restrict navigation in the regulated area during the fireworks display. No person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of Solomons Island Harbor outside the safety zone. Notification of the temporary safety zone will be provided to the public via marine information broadcasts.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this safety zone will restrict access to the area, the effect of the rule will not be significant because: (i) There is little vessel traffic associated with commercial fishing and recreational boating in the area, (ii) vessels can transit waters outside the safety zone, (iii) the safety zone is of limited duration and limited size, and (iv) the Coast Guard will give advance notice to mariners via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate, transit, or anchor in a portion of the Solomons Island Harbor, at Solomons Island, MD, from 7:30 p.m. through 10:30 p.m. on April 16, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. In addition, before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway to allow mariners to make alternative plans for transiting the affected area.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone to protect the public from dangers associated with a fireworks display.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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 § 165.T05–0179 to read as follows:

§ 165.T05–0179 Safety Zone; Fireworks Display, Patuxent River, Solomons Island Harbor, MD.

(a) *Regulated Area.* The following area is a safety zone: All waters in Solomons Island Harbor, within a 100 yards radius of a fireworks discharge barge in approximate position latitude 38°19′21″ N, longitude 076°27′16″ W, located at Solomons Island, Maryland (NAD 1983).

(b) *Regulations.* The general regulations found in § 165.23 of this part apply to the area described in paragraph (a) of this section.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port Baltimore.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at 410–576–2693 or on VHF–FM marine band radio channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions. Captain of the Port Baltimore* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 7:30 p.m. through 10:30 p.m. on April 16, 2010.

Dated: March 25, 2010.

Mark P. O'Malley,

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

[FR Doc. 2010–8092 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0133]

RIN 1625–AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor during the movement of the historic sloop-of-war USS CONSTELLATION on May 27, 2010. This action is necessary to provide for the safety of life on navigable waters during the tow of the vessel from its berth at the Inner Harbor in Baltimore, Maryland, to a point on the Patapsco River near the Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland, and its return. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during the event.

DATES: This rule is effective from 2 p.m. May 27, 2010 through 7 p.m. June 3, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0133 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0133 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to public interest to delay the effective date of this rule. Delaying the effective date would be contrary to the safety zone's intended objectives since immediate action is needed to protect persons and vessels against the hazards associated with the movement of an historic vessel being towed on confined navigable waters. Such hazards include damages and injuries caused by collisions with other vessels and navigational obstructions and hazards caused by vessel sinkings.

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

Background and Purpose

The Historic Ships in Baltimore Museum is planning to conduct a "turn-around" ceremony involving the sloop-of-war USS CONSTELLATION in Baltimore, Maryland on Thursday, May 27, 2010. Planned events include a three-hour, round-trip tow of the USS CONSTELLATION in the Port of Baltimore, with an onboard salute with navy pattern cannon while the historic vessel is positioned off Fort McHenry National Monument and Historic Site. Beginning at 3 p.m., the historic Sloop-of-War USS CONSTELLATION will be towed "dead ship," which means that the vessel will be underway without the benefit of mechanical or sail propulsion.

The return dead ship tow of the USS CONSTELLATION to its berth in the Inner Harbor is expected to occur immediately upon execution of a tug-assisted turn-around of the USS CONSTELLATION on the Patapsco River near Fort McHenry. The Coast Guard anticipates a large recreational boating fleet during this event, scheduled on a late Thursday afternoon during the Memorial Day Holiday weekend in Baltimore, Maryland. Operators should expect significant vessel congestion along the planned route. In the event of inclement weather, the "turn-around" will be rescheduled on Thursday, June 3, 2010.

To address safety concerns during the event, the Captain of the Port, Baltimore, Maryland is establishing a safety zone upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor. The safety zone will help the Coast Guard provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. Due to the need to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event, a temporary safety zone is necessary for this type of event.

Discussion of Rule

A regulation establishing a permanent safety zone for this annual event, with an enforcement period from 2 p.m. through 7 p.m. annually on the Friday following Labor Day, has already been published and is detailed at 33 CFR 165.512. However, due to a change in scheduling for this calendar year, this event is planned for Thursday, May 27, 2010. The historic sloop-of-war USS CONSTELLATION is scheduled to be towed "dead ship" from its berth at Pier 1 in Baltimore's Inner Harbor to a point on the Patapsco River near Fort McHenry National Monument and Historic Shrine, Baltimore, Maryland, along a one-way, planned route of approximately four nautical miles, that includes specified waters of the Patapsco River, Northwest Harbor and Inner Harbor. After being turned-around, the USS CONSTELLATION will be returned to its original berth at Pier 1, Inner Harbor, Baltimore, Maryland. Due to the need to safeguard dead ship tow participants and prevent vessels or persons from approaching the USS CONSTELLATION along the intended route immediately prior to, during, and following the scheduled towing evolution, vessel traffic will be restricted on certain waters of the Patapsco River, Northwest Harbor and Inner Harbor.

The Captain of the Port Baltimore, Maryland is establishing a temporary moving safety zone around the USS CONSTELLATION dead ship tow participants from 2 p.m. through 7 p.m. on May 27, 2010, and if necessary due to inclement weather, from 2 p.m. through 7 p.m. on June 3, 2010. The regulated area includes all waters within 200 yards ahead of or 100 yards outboard or aft of the historic sloop-of-war USS CONSTELLATION while operating in the Inner Harbor, the Northwest Harbor and the Patapsco River. Vessels underway at the time this safety zone is implemented will immediately proceed out of the zone. With the exception of USS CONSTELLATION "turn-around" participants, entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative. U.S. Coast Guard patrol vessels will be provided to prevent the movement of persons and vessels in the regulated area. The Captain of the Port will issue Broadcast Notices to Mariners to publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this safety zone restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

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 may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit through or within the safety zone during the enforcement period. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. Smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone. Maritime advisories will be widely available to the maritime community before the effective period.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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 § 165.T05–0133 to read as follows:

§ 165.T05–0133 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

(a) *Location.* The following area is a safety zone: all waters within 200 yards ahead of or 100 yards outboard or aft of the historic Sloop-of-War USS CONSTELLATION while operating in the Inner Harbor, the Northwest Harbor and the Patapsco River.

(b) *Definitions.* As used in this section:

(1) *Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) *USS CONSTELLATION "turn-around" participants* means the USS CONSTELLATION, its support craft and the accompanying towing vessels.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) With the exception of USS CONSTELLATION "turn-around" participants, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first request authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing lights, or other means, the operator of a vessel shall proceed as directed. If

permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 2 p.m. through 7 p.m. on May 27, 2010, and if necessary due to inclement weather, from 2 p.m. through 7 p.m. on June 3, 2010.

Dated: March 25, 2010.

Mark P. O'Malley,

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

[FR Doc. 2010–8093 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0988; FRL–9135–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution From Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP). We are approving revisions to Title 30 of the Texas Administrative Code (TAC), Chapter 114, which the State submitted on May 15, 2006, October 10, 2006, January 17, 2008, and February 28, 2008. These revisions establish the Rebate Grant Process and the Texas Clean School Bus Program, amend the Texas Emissions Reduction Plan (TERP), and amend the Locally Enforced Motor Vehicle Idling Limitations. The EPA is approving these revisions pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule will be effective June 8, 2010 without further notice unless EPA receives relevant adverse comments by May 10, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2006–0988, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Please follow the online instructions for submitting comments.
- *EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6comment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2006–0988. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7241; fax number 214–665–7263; e-mail address *medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means EPA.

Outline

I. What Action Is EPA Taking?
II. Background
III. What Did the State Submit?
  A. The Rebate Grant Process
  B. Texas Clean School Bus Program
  C. The Texas Emissions Reduction Plan (TERP)
  D. Locally Enforced Motor Vehicle Idling Limitations
IV. Final Action

V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

Today we are approving revisions to the Texas SIP that amend 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles. These revisions consist of the new Rebate Grant Process and the new Texas Clean School Bus Program, and additional revisions to the TERP and Locally Enforced Motor Vehicle Idling Limitations, as submitted to EPA by the TCEQ on May 15, 2006, October 10, 2006, January 17, 2008, and February 28, 2008. Some of the revisions we are approving in this rulemaking are administrative in nature—they identify an acronym and renumber a sequence of paragraphs. A majority of the revisions, however, are substantive in nature. We are approving these revisions in accordance with section 110 of the CAA.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revisions if relevant adverse comments are received. This rule will be effective on June 8, 2010 without further notice unless we receive relevant adverse comments by May 10, 2010. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Background

Section 110 of the CAA requires States to develop air pollution regulations and control strategies to ensure that air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the State, to ensure that air quality in the State meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing State regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each State must submit regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP.

The Texas SIP includes a variety of control strategies, including the TERP, a program that provides funding for owners and operators to reduce emissions from heavy-duty diesel equipment used in areas that are not meeting the NAAQS for ozone.[1] On October 10, 2006, the TCEQ submitted SIP revisions to EPA to revise the existing TERP program by establishing the Rebate Grant Process and the Texas Clean School Bus Program. The Rebate Grant Process will provide fast and simple access to rebate grants under the TERP. The Texas Clean School Bus Program also revises the TERP to fund efforts by school districts to improve the health of children by reducing emissions of diesel exhaust from school buses.

On January 17, 2008, the State submitted SIP revisions that further amend the TERP. These revisions authorize the TCEQ to allow travel on highways and roadways designated by the TCEQ to count toward the requirement that grant-funded vehicles operate at least 75 percent of the annual miles in the eligible counties; lower the cost-effectiveness criteria from $13,000 per ton of NO_X reduced to $15,000 per ton of NO_X reduced; and remove the option that vehicles, equipment, and engines replaced under the program may be removed from the State in lieu of being recycled or scrapped.

On May 15, 2006, the State submitted SIP revisions addressing Locally Enforced Motor Vehicle Idling Limitations. The EPA first approved revisions to the Texas SIP that incorporated Locally Enforced Motor Vehicle Idling Limitations on April 11, 2005 (70 FR 18308), for use as a control strategy to reduce ground-level ozone. The current motor vehicle idling rules limit the idling time for certain motor vehicles. The SIP revisions submitted on May 15, 2006, prohibit idling of a vehicle within a school zone or within 1,000 feet of a public school during operating hours; modify the exemption that applies to motor vehicles with a gross vehicle weight rating of 14,000 pounds or less; clarify the intent of the rule; and add exemptions to allow idling the primary propulsion engine of a vehicle to provide air conditioning while using the vehicle to perform an essential function related to roadway construction or maintenance, and when powering an air conditioner in the vehicle's sleeper berth for a government-mandated rest period.

On February 28, 2008, the State submitted revisions to the SIP that further amend Locally Enforced Motor Vehicle Idling Limitations. The February 28, 2008 SIP revisions modify the exemption that applies to motor vehicles with a gross vehicle weight rating of 14,000 pounds or less; extend the expiration date of two subsections to September 1, 2009; prohibit idling within 1,000 feet of hospitals and residential areas; and restrict idling of vehicles with sleeper berths when there is a vehicle heating and air conditioning hook-up facility located within two miles. Currently, there are no Federal regulations governing idling time for motor vehicles.

More detail on each of these revisions is included below and in the Technical Support Document (TSD). The TSD is provided in the docket for this rulemaking.[2]

We note one more SIP revision, submitted by the State on October 4, 2001, which is not included in the TSD for this rulemaking. The State submitted revisions to the SIP on October 4, 2001, that included the repeal of 30 TAC 114.507 (*Exemptions*). Section 114.507 prohibited a motor vehicle with a gross vehicle weight rating greater than 14,000 pounds from idling more than five consecutive minutes in the Houston-Galveston-Brazoria area, from April 1 through October 31 of each calendar year. EPA did not take action on this portion of the revision, but on September 6, 2006, EPA approved a revision to the Texas SIP that removed from the SIP "Division 1: Motor Vehicle Idling Limitations," which included section 114.507 (*see* 71 FR 52670). Therefore, that portion of the State's October 4, 2001 submittal that pertains to section 114.507 will not be acted on by EPA because it is superseded by the September 6, 2006 rulemaking.

[1] Although the TERP has several different components, the part of the plan that EPA approved into the Texas SIP is the Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. *See* 70 FR 48647 (August 19, 2005).

[2] The docket for this rulemaking, which includes a TSD, is available at *http://www.regulations.gov*. The docket number is EPA–R06–OAR–2006–0988.

III. What Did the State Submit?

A. The Rebate Grant Process

The Rebate Grant Process is new within 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter K, Mobile Source Incentive Programs; Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. The rule was adopted by the State on September 20, 2006, and submitted to EPA for approval into the SIP on October 10, 2006. The Rebate Grant Process is codified at 30 TAC 114.624 and will provide for fast and simple access to TERP funds, using a streamlined process to award standardized rebates for designated project types. The State may award rebate grants for a specific region or statewide, limit or expand the project types to further the goals of the program, and designate another entity to administer the grants. The EPA is approving this revision to the SIP because it is consistent with section 110(1) of the CAA. The EPA notes, however, that in the DFW and Houston SIPs, certain commitments have been approved into the SIP for reducing NO_X as necessary for the areas to reach attainment.[3] Texas must continue to insure that these commitments are met.

B. Texas Clean School Bus Program

The Texas Clean School Bus Program is a new division in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter K, Mobile Source Incentive Programs; Division 4, Texas Clean School Bus Program. The rule was adopted by the State on September 20, 2006, and submitted to EPA for approval into the SIP on October 10, 2006.

There are five new sections within Division 4. Section 114.640 (*Definitions*) identifies and defines the terms used in the Texas Clean School Bus Program: (1). *Diesel exhaust,* (2). *Incremental Cost,* (3). *Qualifying fuel,* (4). *Repower,* and (5). *Retrofit.* Section 114.642 (*Applicability*) establishes program eligibility for school districts and charter schools statewide; the program is not limited to nonattainment areas. This section also allows regional planning organizations, such as Councils of Government and private non-profit organizations, to apply for and receive grants to improve the program. Section 114.644 (*Clean School Bus Program Requirements*) establishes the basic program requirements for the Clean School Bus Program, including: the types of projects eligible for a Clean School Bus grant; allowance for the TCEQ to limit and/or prioritize funding in a particular funding period to certain areas of the State; allowance for the TCEQ to establish other criteria in a particular funding period, including reductions in diesel exhaust emissions to be achieved and additional pollutants to be addressed; the minimum use and useful life of a project under the grant program; a requirement that for a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State; strict adherence to the application form; allowance of the use of grant funds to pay incremental costs associated with the project and prohibition against using the grant for administrative expenses; prohibition against use of grant funds to meet Federal or State legal requirements and for credit under any State or Federal emissions reductions credit averaging, banking, or trading program;[4] and allowance for the TCEQ to require that the grant recipient return some or all of the grant funds if they fail to meet the terms of a project grant or conditions of the Texas Clean School Bus Program. Section 114.646 (*Monitoring, Recordkeeping, and Reporting Requirements*) requires grant recipients to adhere to the reporting requirements of their grant. Reports must occur at least annually. Section 114.648 (*Implementation Schedule*) establishes that the Texas Clean School Bus Program will expire on August 31, 2013.

Although the rules found in new Division 4 establish the needed framework for a clean school bus program, the Texas Clean School Bus Program would be funded by TERP only if TCEQ is given the necessary appropriation authority by the Texas State legislature (Texas Constitution, Article VIII, Section 6) and TERP revenues reach levels required to fund the program (Texas Health and Safety Code, section 386.252). The Texas Clean School Bus Program remained unfunded during the 2006–2007 biennium because an appropriation was not made by the Texas State legislature. However, the program was funded during the 2008–2009 biennium after the Texas State Legislature gave TCEQ the necessary appropriation authority (House Bill No. 1, 81st Legislature, Regular Session, General Appropriations Act).

In a letter dated May 16, 2006, EPA provided TCEQ with comments, stating that in order for the Texas Clean School Bus Program to be approvable into the SIP under the Economic Incentive Program (EIP), reductions created by the plan must be surplus, quantifiable, enforceable, and permanent, and should be made consistent with the principles of equity and environmental benefit.[5] In their submittal, TCEQ confirmed that the Texas Clean School Bus Program meets the requirements of a financial mechanism EIP under EPA's *Improving Air Quality with Economic Incentive Programs* guidance. Our analysis of this revision's consistency with EPA's EIP guidelines can be found in the TSD, which is provided in the docket for this rulemaking.

The EPA is approving the above revisions to the SIP, which establish the needed framework for the Texas Clean School Bus Program, because they are consistent with section 110(1) of the CAA and EPA's EIP guidance. However, EPA notes once again that in the DFW and Houston SIPs, certain commitments have been approved into the SIP for reducing NO_X as necessary for the areas to reach attainment. Texas must continue to insure that these commitments are met.

C. The Texas Emissions Reduction Plan (TERP)

The TERP is found in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter K, Mobile Source Incentive Programs; Division 3, Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles. Revisions to the TERP were adopted by the State on September 20, 2006 and submitted to EPA for approval into the SIP on October 10, 2006. Subsequent revisions to the TERP were adopted by the State on December 5, 2007 and submitted to EPA for approval into the SIP on January 17, 2008. These are explained in detail below.

The October 10, 2006 submittal provides for clarification of the definition of "cost-effectiveness," as it applies to the TERP. The amendment to paragraph (1) in section 114.620 (*Definitions*) modifies the definition of "cost-effectiveness" to clarify how the cost-effectiveness of TERP grant applications will be determined. Cost-

[3] For specific commitments that have been established for reducing NO_X, as necessary, for DFW and Houston to reach attainment, please *see* the DFW SIP approved on January 14, 2009 (74 FR 01903), and the Houston SIP approved on September 6, 2006 (71 FR 52670).

[4] Except as provided under Texas Health and Safety Code, section 386.056, which states that an owner or operator of a site located in the Houston-Galveston or Dallas-Fort Worth nonattainment area may, under certain circumstances, use emissions reductions generated by a program established under this chapter to offset the requirements of commission rules relating to control of air pollution from oxides of nitrogen.

[5] *See* EPA's *Improving Air Quality with Economic Incentive Programs* guidance, chapters 4 and 8 (January 2001).

effectiveness is defined as the total dollar amount expended divided by the total number of tons of NO_X emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by TCEQ, taking into account the interest rate on bonds and interest earned by State funds. In addition, amendments to paragraphs (8) and (10) in section 114.620, replace the acronym "EPA" with "United States Environmental Protection Agency." The EPA is approving these amendments because they will improve TERP program effectiveness by ensuring that the cost-effectiveness of projects under the TERP is accurately calculated.

The revisions submitted on October 10, 2006 also address section 114.622 (*Incentive Program Requirements*). Revisions to subsection (d) in section 114.622 establish that the TCEQ may set lower cost-effectiveness limits as needed to ensure the best use of available funds, which will allow spending a larger amount of money per ton of NO_X reduced. In addition to cost-effectiveness, the TCEQ may base project selection decisions on other measures when evaluating the effectiveness of projects in reducing NO_X emissions in relation to the funds to be awarded. While many of the most cost-effective projects have already been completed, old, polluting equipment remains in use in nonattainment areas and this revision would increase the eligibility of a portion of that equipment for TERP funding. The EPA is approving this amendment because it will allow TERP to fund less cost-effective projects that nevertheless would reduce NO_X emissions in nonattainment areas.

A portion of the October 10, 2006 revision to subsection (d) in section 114.622, which specifies that the cost-effectiveness of a proposed project under the TERP program must not exceed a cost-effectiveness of $13,000 per ton of NO_X emissions reduced, is superseded by a revision in the January 17, 2008 submittal, which further lowers the cost-effectiveness limits for projects to $15,000 per ton of NO_X emissions reduced. In addition, the amendment to subsection (c) of section 114.622, which requires that old equipment or engines that are part of a proposed project that includes a replacement of equipment or a repower be recycled, scrapped or otherwise permanently removed from the State, is superseded by the January 17, 2008 submittal, which requires grant recipients to recycle or scrap the old equipment or engine, except in specific grants in which the applicant provides sufficient assurances that an old locomotive will not be returned to the State. The EPA is approving these revisions because they will improve TERP program effectiveness by increasing the pool of eligible applicants for TERP funds and by providing greater certainty that older, higher emitting equipment will be removed from service.

The January 17, 2008 submittal also revises subsection (b) of section 114.622 (*Incentive Program Requirements*), which authorizes the TCEQ to allow vehicles replaced or repowered under the TERP to travel on highways and roadways, or portions of a highway or roadway, designated by the TCEQ and located outside a nonattainment area or affected county to count towards the percentage-of-use requirement when determining eligibility for TERP grants. Previously, not less than 75 percent of the vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant were required to be projected to take place in a nonattainment area or affected county in Texas. The requirement that at least 75 percent of the vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of the State of Texas, or on highways and roadways designated by the TCEQ and located outside a nonattainment area or affected county, is only used to determine TERP program eligibility. According to the TERP guidelines, usage outside of the nonattainment areas or affected counties will not count towards the emissions reductions used to determine the cost-effectiveness of the project. The EPA is approving this revision to the SIP because it will result in more vehicles traveling in and around the nonattainment areas to be eligible for TERP grants.

The EPA is approving the above revisions to the TERP program into the SIP because they are consistent with section 110(1) of the CAA, they give the State additional flexibility to allocate TERP funds to achieve the air quality goals of the State, and the TERP continues to be consistent with EPA's EIP guidance.[6] EPA notes, however, that in the DFW and Houston SIPs, certain commitments have been approved into the SIP for reducing NO_X as necessary for the areas to reach attainment. Texas must continue to insure that these commitments are met.

D. Locally Enforced Motor Vehicle Idling Limitations

The Locally Enforced Motor Vehicle Idling Limitations are found in 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter J, Operational Controls for Motor Vehicles; Division 2, Locally Enforced Motor Vehicle Idling Limitations. This rule can be implemented within the jurisdiction of any local government in the State that has signed a Memorandum of Agreement (MOA) with the TCEQ. The local government that signs the MOA is delegated the authority to enforce the rule within its jurisdiction. Thus far, numerous cities and counties in the Austin and Dallas-Fort Worth areas have adopted these regulations.[7] Revisions to Division 2 were adopted by the State on April 26, 2006, and submitted to EPA for approval into the SIP on May 15, 2006. Subsequent revisions to Division 2 were adopted by the State on January 30, 2008, and submitted to EPA for approval into the SIP on February 28, 2008. These are explained in detail below.

The May 15, 2006 submittal revises section 114.512 (*Control Requirements for Motor Vehicle Idling*). The first amendment simply identifies the existing first paragraph as subsection (a). This paragraph states that no person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle is not in motion during the period of April 1 through October 31 of each calendar year. The EPA is approving this revision because it allows for existing section 114.512 to be organized into subsections.

The second revision to Section 114.512 adds new subsection (b), which states that no driver using the vehicle's sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation, an offense of which may be punishable by a fine not to exceed $500. A portion of new subsection (b) in section 114.512 (submitted May 15, 2006), which establishes that this particular subsection expires on September 1, 2007, is superseded by a

[6] For our analysis of the consistency of the TERP revisions with EPA's *Improving Air Quality with Economic Incentive Programs* guidance (January 2001), please *see* the TSD, which is located in the docket for this rulemaking.

[7] For a current list of areas implementing idling restrictions in North Texas, visit *http://www.nctcog.org/trans/air/programs/idling/index.asp.* For a current list of areas implementing idling restrictions in the Austin area, visit *http://www.tceq.state.tx.us/implementation/air/sip/vehicleidling.html.*

revision in the February 28, 2008 submittal, which extends the expiration date to September 1, 2009. The February 28, 2008 submittal also revises subsection (b) by adding language to prohibit idling by drivers using the vehicle's sleeper berth in residential areas[8] or within 1,000 feet of a hospital. The EPA is not taking action on the revisions to subsection (b) of section 114.512 that were submitted on May 15, 2006 and February 28, 2008, because the expiration date of September 1, 2009 has already passed, and subsection (b) is therefore no longer in effect.

The May 15, 2006 submittal also revises section 114.517 (*Exemptions*). The amendment to paragraph (1) in section 114.517 continues to exempt motor vehicles with a gross vehicle weight rating of 14,000 pounds or less, but if before September 1, 2007, only those that do not have a sleeper berth. This is superseded by the January 28, 2008 revision, which provides the following: Paragraph (1) specifies that the control requirements for motor vehicle idling do not apply to "a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and does not have a sleeper berth." New paragraph (2) indicates that after September 1, 2009, all motor vehicles with a gross vehicle weight rating of 14,000 pounds or less will be exempt from the provisions of section 114.512 (*Control Requirements for Motor Vehicle Idling*). This revision simply clarifies that control requirements for motor vehicle idling do not apply to any motor vehicle with a gross vehicle weight rating of 14,000 pounds or less. The Locally Enforced Motor Vehicle Idling Limitations approved into the Texas SIP on April 11, 2005 (70 FR 18308) applied only to heavy duty vehicles with a gross vehicle weight rating greater than 14,000 pounds, and were not intended to apply to any vehicle with a gross vehicle weight rating of 14,000 pounds or less, regardless of whether or not it has a sleeper berth. This revision to section 114.517 allows for consistency with the TX SIP revisions approved in 2005. The EPA is approving these revisions submitted on February 28, 2008 because they provide for clarification of the exemptions to the motor vehicle idling limits. EPA is not taking action on the May 15, 2006 revision to paragraph (1) in section 114.517, because it is superseded by the revisions submitted on February 28, 2008.

[8] As defined by Local Government Code, Section 244.001, which explains what areas are classified as residential areas.

The May 15, 2006, submittal also revises section 114.517, paragraphs (4) and (7). In paragraph (4), the phrase "not including" is replaced with "other than," such that the paragraph reads that one of the exemptions to the control requirements for motor vehicle idling is "the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, other than propulsion, and/or passenger compartment heating, or air conditioning." In paragraph (7), the phrase "comfort/safety" is replaced with "comfort and safety" and the word "those," referring to "vehicles," is removed because it is redundant. In addition, the phrase "or public" is added and the phrase "school buses" is removed, to clarify that the primary propulsion engine of all motor vehicles intended for commercial or public passenger transportation, or passenger transit operations, are allowed to idle up to a maximum of 30 minutes when being used to provide air conditioning or heating necessary for passenger comfort and safety. Furthermore, the exemption regarding the propulsion engine of motor vehicles used for passenger transit operations is removed from paragraph (8) and inserted into paragraph (7). Revised paragraph (7) now reads that the provisions of section 114.512 do not apply to "the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort and safety in vehicles intended for commercial or public passenger transportation, or passenger transit operations, in which case idling up to a maximum of 30 minutes is allowed." Language is added to paragraph (8), exempting the primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety while the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance, from the control requirements for motor vehicle idling. The new exemption found in paragraph (8) ensures that the control requirements for motor vehicle idling do not conflict with the Texas Department of Transportation guidelines for vehicle idling by employees. The revision to paragraph (8) will assist local jurisdictions in determining enforcement responsibilities. Text is edited in paragraphs (9) and (10) for clarification: the word "or" is removed from the end of paragraph (9) to indicate that it is no longer the next to last paragraph; in paragraph (10), the word "who" is replaced with "that" and a period is replaced with a semi-colon and the word "or" is added to the end of paragraph (10), to indicate that it is no longer the final paragraph in section 114.517. The EPA is approving these revisions because they help to clarify procedures regarding idling restrictions.

The May 15, 2006 submittal also adds new paragraph (11), which exempts from the control requirements for motor vehicle idling, a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period. The February 28, 2008 submittal revises paragraph (11) by adding language that prohibits idling to power a heater or air conditioner while a driver is using the vehicle's sleeper berth if the vehicle is within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available. It should be noted that in a letter dated January 17, 2006, EPA provided TCEQ with comments, stating that the addition of exemption (11) would weaken the SIP rules approved by EPA in 2005. We added that we would not be able to approve this revision into the SIP unless TCEQ would provide substitute reductions or modeling to show that attainment can be met without the credits affected by these changes. TCEQ did not revise the rule or provide new substitute reductions or modeling in response to our comments. However, the February 28, 2008 submittal extends the expiration date of paragraph (11) to September 1, 2009, and it should be noted that the expiration date has passed and the exemption is no longer in effect. Therefore, the EPA is not taking action on the revisions to paragraph (11) that were submitted on May 15, 2006, and February 28, 2008.

The February 28, 2008 submittal also revises section 114.517 (*Exemptions*), by renumbering the paragraphs to account for new paragraph (2). The EPA is approving this revision to the SIP because it allows for clarity and consistency in the numbering of the paragraphs in section 114.517.

The EPA is approving the above revisions to the Locally Enforced Motor Vehicle Idling Limitations into the SIP because they are consistent with section 110(1) of the CAA, and because they allow for clarity and consistency of the exemptions and control requirements for motor vehicle idling.

IV. Final Action

The EPA is approving revisions to the Texas SIP submitted to EPA on May 15, 2006, October 10, 2006, January 17, 2008, and February 28, 2008, which

apply to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles. These revisions establish the Rebate Grant Process and Texas Clean School Bus Program, and amend the TERP and Locally Enforced Motor Vehicle Idling Limitations. The revisions are consistent with section 110(1) of the Act.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: March 24, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 114 (Reg 4) as follows:

■ a. Under Subchapter J, Division 2, by revising the entries for sections 114.512 and 114.517;

■ b. Under Subchapter K, Division 3, by revising the entries for sections 114.620 and 114.622, and adding a new entry for section 114.624;

■ c. Under Subchapter K, immediately following section 114.629, by adding a new centered heading "Division 4: Texas Clean School Bus Program," followed by new entries for sections 114.640, 114.642, 114.644, 114.646 and 114.648.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
*	*	*	*	*	*	*
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter J—Operational Controls for Motor Vehicles Division 2: Locally Enforced Motor Vehicle Idling Limitations				
*	*	*	*	*
Section 114.512	Control Requirements for Motor Vehicle Idling.	1/30/2008	4/9/2010 [Insert *FR* page number where document begins].	Not in SIP: 114.512(b).
Section 114.517	Exemptions	1/30/2008	4/9/2010 [Insert *FR* page number where document begins].	Not in SIP: 114.517(12).
Subchapter K—Mobile Source Incentive Programs Division 3: Diesel Emission Reduction Incentive Program for On-road and Non-road Vehicles				
Section 114.620	Definitions	9/20/2006	4/9/2010 [Insert *FR* page number where document begins].	
*	*	*	*	*
Section 114.622	Incentive Program Requirements	12/5/2007	4/9/2010 [Insert *FR* page number where document begins].	
*	*	*	*	*
Section 114.624	Rebate Grant Process	9/20/2006	4/9/2010 [Insert *FR* page number where document begins].	
*	*	*	*	*
Division 4: Texas Clean School Bus Program				
Section 114.640	Definitions	9/20/2006	4/9/2010 [Insert *FR* page number where document begins].	
Section 114.642	Applicability	9/20/2006	4/9/2010 [Insert *FR* page number where document begins].	
Section 114.644	Clean School Bus Program Requirements.	9/20/2006	4/9/2010 [Insert *FR* page number where document begins].	
Section 114.646	Monitoring, Recordkeeping, and Reporting Requirements.	9/20/2006	4/9/2010 [Insert *FR* page number where document begins].	
Section 114.648	Implementation Schedule	9/20/2006	4/9/2010 [Insert *FR* page number where document begins].	
*	*	*	*	*

[FR Doc. 2010–8005 Filed 4–8–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0045; FRL–9124–5]

Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from operations associated with graphic arts coating, can coating, degreasing, and wood products coating. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 8, 2010 without further notice, unless EPA receives adverse comments by May 10, 2010. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2010–0045], by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

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

Table of Contents

I. The State's Submittal
A. What Rules Did the State Submit?
B. Are There Other Versions of These Rules?
C. What Is the Purpose of the Submitted Rules or Rule Revisions?
II. EPA's Evaluation and Action
A. How Is EPA Evaluating the Rules?
B. Do the Rules Meet the Evaluation Criteria?
C. EPA Recommendations to Further Improve the Rules
D. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SMAQMD	450	Graphic Arts	10/23/08	04/29/09
SMAQMD	452	Can Coating	09/25/08	09/15/09
SMAQMD	454	Degreasing Operations	09/25/08	09/15/09
SMAQMD	463	Wood Products Coatings	09/25/08	09/15/09

On July 20, 2009 and on January 21, 2010, EPA determined that the submittal for SMAQMD Rule 450 and SMAQMD Rules 452, 454, and 463, met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of Rule 463 in the SIP, although SMAQMD adopted earlier versions of this rule on September 5, 1996 and December 5, 1996, and CARB submitted them to us on May 18, 1998. We approved earlier versions of Rule 450 into the SIP on November 13, 1998 (63 FR 63410), Rule 452 into the SIP on November 9, 1998 (63 FR 60214), and Rule 454 into the SIP on April 2, 1999 (64 FR 15922). The SMAQMD adopted revisions to the SIP-approved versions of Rule 450 and Rule 454 on October 23, 2008 and September 25, 2008 and CARB submitted them to us on April 29, 2009 and September 15, 2009. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rules or Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. The revised Rules 450, 452, and 463 strengthen VOC limits on graphic arts materials, can coatings, and wood coatings. Rule 454 limits VOC

emissions from the operations associated with degreasing operations. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (*see* sections 182(a)(2) and (b)(2)), and must not relax existing requirements (*see* sections 110(l) and 193). The SMAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rules 450, 452, 454, and 463 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Control Technique Guidelines for Control of VOCs from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks," EPA–450/2–77–008, May 1977.
4. "Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing," EPA–453/R–06–002, September 2006.
5. "Control Techniques Guidelines for Paper, Film, and Foil Coatings," EPA–453/R–07–003, September 2007.
6. "Control Techniques Guidelines: Industrial Cleaning Solvents" EPA 453/R06–001, September 2006.
7. "Control of Volatile Organic Emissions from Solvent Metal Cleaning," EPA–450/2–77–022, November 1977.
8. "Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations," EPA–453/R–96–007, April 1996.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 10, 2010, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 8, 2010. This will incorporate the rules into the Federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 8, 2010. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 5, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

Editorial Note: This document was received in the Office of the Federal Register on April 5, 2010.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. In Section 52.220, is amended by adding and reserving paragraphs (c)(372) through (c)(376) and by adding paragraphs (c)(362)(i)(C) and (c)(377) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(362) * * *

(i) * * *

(C) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 450, "Graphic Arts Operations," adopted October 23, 2008.

* * * * *

(c) * * *

(377) New and amended regulations were submitted on September 15, 2009.

(i) Incorporation by Reference.

(A) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 452, "Can Coating," Rule 454, "Degreasing Operations," Rule 463, "Wood Products Coatings," adopted September 25, 2008.

* * * * *

[FR Doc. 2010–8003 Filed 4–8–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1081]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	Town of Buckeye (08–09–0929P).	August 27, 2009; September 3, 2009; *Arizona Business Gazette*.	The Honorable Jackie Meck, Mayor, City of Buckeye, 1101 East Ash Avenue, Buckeye, AZ 85326.	August 10, 2009	040039
Maricopa	City of Goodyear (08–09–0929P).	August 27, 2009; September 3, 2009; *Arizona Business Gazette*.	The Honorable James M. Cavanaugh, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	August 10, 2009	040046
Maricopa	Unincorporated areas of Maricopa County (08–09–0929P).	August 27, 2009; September 3, 2009; *Arizona Business Gazette*.	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	August 10, 2009	040037
Colorado:					
Adams	City of Northglenn (09–08–0457P).	August 27, 2009; September 3, 2009; *Northglenn Thornton Sentinel*.	The Honorable Kathleen Novak, Mayor, City of Northglenn, 11701 Community Center Drive, Northglenn, CO 80233.	August 20, 2009	080257
Adams	City of Thornton (09–08–0457P).	August 27, 2009; September 3, 2009; *Northglenn Thornton Sentinel*.	The Honorable Erik Hansen, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	August 20, 2009	080007
Arapahoe	Unincorporated areas of Arapahoe County (09–08–0001P).	August 24, 2009; August 31, 2009; *Denver Post*.	The Honorable Susan Beckman, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166.	December 29, 2009	080011
Florida: Lee	Unincorporated areas of Lee County (09–04–5099P).	August 28, 2009; September 4, 2009; *News Press*.	The Honorable Ray Judah, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	January 4, 2009	125124
North Carolina:					
Durham	Durham County (Unincorporated Areas) (09–04–5688P).	July 31, 2009; August 7, 2009; *The Herald-Sun*.	Mr. Michael M. Ruffin, Manager, Durham County, 200 East Main Street, 2nd Floor, Old Courthouse, Durham, NC 27701.	July 24, 2009	370085
Durham	City of Durham (09–04–5688P).	July 31, 2009; August 7, 2009; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	July 24, 2009	370086
Oregon:					
Umatilla	City of Stanfield (09–10–0493P).	August 28, 2009; September 4, 2009; *East Oregonian*.	The Honorable Thomas J. McCann, Mayor, City of Stanfield, P.O. Box 369, Stanfield, OR 97875.	August 17, 2009	410213
Umatilla	Unincorporated areas of Umatilla County (09–10–0493P).	August 28, 2009; September 4, 2009; *East Oregonian*.	The Honorable Larry Givens, Chairman, Umatilla County Board of Commissioners, 216 Southeast 4th Street, Pendleton, OR 97801.	August 17, 2009	410204
Texas:					
Collin	Unincorporated areas of Collin County (08–06–2363P).	August 20, 2009; August 27, 2009; *Sachse News* August 19, 2009; August 26, 2009; *Wylie News*.	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	November 25, 2009	480130
Collin	City of Sachse (08–06–2363P).	August 20, 2009; August 27, 2009; *Sachse News*.	The Honorable Mike Felix, Mayor, City of Sachse, 5109 Peachtree Lane, Sachse, TX 75048.	November 25, 2009	480186
Collin	City of Wylie (08–06–2363P).	August 19, 2009; August 26, 2009; *Wylie News*.	The Honorable Eric Hogue, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, TX 75098.	November 25, 2009	480759
Webb	Unincorporated areas of Webb County (08–06–3105P).	August 7, 2009; August 14, 2009; *Laredo Morning Times*.	The Honorable Danny Valdez, Webb County Judge, 1000 Houston Street, 3rd Floor, Laredo, TX 78040.	December 14, 2009	481059
Williamson	City of Cedar Park (08–06–2893P).	August 13, 2009; August 20, 2009; *Hill Country News*.	The Honorable Bob Lemon, Mayor, City of Cedar Park, City Hall, 600 North Bell Boulevard, Cedar Park, TX 78613.	December 18, 2009	481282

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 18, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8041 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Mobile (FEMA Docket No: B–1059).	Unincorporated areas of Mobile County (08–04–6003P).	May 11, 2009; May 18, 2009; *Press-Register.*	The Honorable Stephen Nodine, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	September 15, 2009	015008
Montgomery (FEMA Docket No: B–1059).	City of Montgomery (08–04–6322P).	May 11, 2009; May 18, 2009; *Montgomery Advertiser.*	The Honorable Todd Strange, Mayor, City of Montgomery, 103 North Perry Street, Montgomery, AL 36104.	September 15, 2009	010174
Tuscaloosa (FEMA Docket No: B–1059).	City of Northport (08–04–6551P).	May 11, 2009; May 18, 2009; *Tuscaloosa News.*	The Honorable Bobby Herndon, Mayor, City of Northport, 3500 McFarland Boulevard, Northport, AL 35476.	September 15, 2009	010202

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tuscaloosa (FEMA Docket No: B–1059).	Unincorporated areas of Tuscaloosa County (08–04–6551P).	May 11, 2009; May 18, 2009; *Tuscaloosa News*.	The Honorable W. Hardy McCollum, Probate Judge, Tuscaloosa County, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	September 15, 2009	010201
Connecticut: Tolland (FEMA Docket No: B–1059).	Town of Coventry (09–01–0698P).	May 11, 2009; May 18, 2009; *Journal Inquirer*.	The Honorable Liz Woolf, Chairperson, Coventry Town Council, Town Hall, 1712 Main Street, Coventry, CT 06238.	September 15, 2009	090110
Florida: Marion (FEMA Docket No: B–1059).	City of Ocala (08–04–4557P).	May 13, 2009; May 20, 2009; *Star-Banner*.	The Honorable Randy Ewers, Mayor, City of Ocala, P.O. Box 1270, Ocala, FL 34478.	September 15, 2009	120330
Illinois: Will (FEMA Docket No: B–1059).	Unincorporated areas of Will County (09–05–1623P).	May 11, 2009; May 18, 2009; *The Herald-News*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	September 15, 2009	170695
Nevada:					
Clark (FEMA Docket No: B–1059).	Unincorporated areas of Clark County (09–09–0526P).	May 12, 2009; May 19, 2009; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	September 16, 2009	320003
Clark (FEMA Docket No: B–1059).	City of Henderson (09–09–0526P).	May 12, 2009; May 19, 2009; *Las Vegas Review-Journal*.	The Honorable James B. Gibson, Mayor, City of Henderson, 240 South Water Street, Henderson, NV 89015.	September 16, 2009	320005
Texas:					
Collin (FEMA Docket No: B–1059).	Town of Prosper (09–06–0211P).	May 11, 2009; May 18, 2009; *Dallas Morning News*.	The Honorable Charles Niswanger, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	September 15, 2009	480141
El Paso (FEMA Docket No: B–1059).	City of El Paso (09–06–0832P).	May 13, 2009; May 20, 2009; *El Paso Times*.	The Honorable John Cook, Mayor, City of El Paso, City Hall, 10th Floor, Two Civic Center Plaza, El Paso, TX 79901.	September 17, 2009	480214

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 22, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8053 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1113]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Tulsa	City of Broken Arrow (09–06–3069P).	February 23, 2010; March 3, 2010; *Tulsa Daily Commerce and Legal News.*	The Honorable Mike Lester, Mayor, City of Broken Arrow, 220 South 1st Street, Broken Arrow, OK 74012.	March 18, 2010	400236
Texas:					
Collin	City of McKinney (10–06–0322P).	February 4, 2010; February 11, 2010; *McKinney Courier-Gazette.*	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	June 11, 2010	480135
Dallas	City of Lancaster (09–06–3164P).	December 29, 2009; January 5, 2010; *Focus Daily News.*	The Honorable Marcus Knight, Mayor, City of Lancaster, P.O. Box 940, Lancaster, TX 75146.	May 5, 2010	480182
Dallas	City of Dallas (09–06–2964P).	March 3, 2010; March 10, 2010; *Dallas Morning News.*	The Honorable Tom Leppert, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	March 26, 2010	480171

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 26, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8077 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1086]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Tuscaloosa.	City of Tuscaloosa (09–04–2835P).	October 12, 2009; October 19, 2009; *Tuscaloosa News*.	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35401.	February 16, 2010	010203
Arizona: Pinal	Unincorporated areas of Pinal County (09–09–0732P).	October 6, 2009; October 13, 2009; *Casa Grande Dispatch*.	The Honorable Lionel D. Ruiz, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, AZ 85232.	September 24, 2009	040077
Arkansas: Benton	City of Rogers (08–06–2995P).	October 6, 2009; October 13, 2009; *Morning News*.	The Honorable Steven A. Womack, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	February 10, 2010	050013
Colorado:					
Adams	Unincorporated areas of Adams County (09–08–0729P).	October 8, 2009; October 15, 2009; *Northglenn-Thornton Sentinel*.	The Honorable Larry W. Pace, Chairman, Adams County Board of Commissioners, 450 South 4th Avenue, Brighton, CO 80601.	February 12, 2010	080001
Adams	City of Commerce City (09–08–0729P).	October 8, 2009; October 15, 2009; *Northglenn-Thornton Sentinel*.	The Honorable Paul Natale, Mayor, City of Commerce City, 7887 East 60th Avenue, Commerce City, CO 80022.	February 12, 2010	080006
Denver	City and County of Denver (09–08–0512P).	October 8, 2009; October 15, 2009; *Denver Post*.	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	February 12, 2010	080046
Denver	City and County of Denver (09–08–0729P).	October 8, 2009; October 15, 2009; *Denver Post*.	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	February 12, 2010	080046
Connecticut: New London.	Town of Colchester (09–01–1230P).	October 9, 2009; October 16, 2009; *Hartford Courant*.	The Honorable Linda Hodge, First Selectman, Town of Colchester, 127 Norwich Avenue, Colchester, CT 06415.	February 15, 2010	090095
Georgia: Cobb	Unincorporated areas of Cobb County (09–04–1602P).	October 9, 2009; October 16, 2009; *Marietta Daily Journal*.	The Honorable Samuel S. Olens, Chairman, Cobb County Board of Commissioners, 100 Cherokee Street, Marietta, GA 30090.	February 15, 2010	130052
Illinois: Will	Unincorporated areas of Will County (09–05–3054P).	October 7, 2009; October 14, 2009; *Herald News*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	September 23, 2009	170695
North Carolina:					
Craven	Unincorporated areas of Craven County (09–04–6122P).	October 7, 2009; October 14, 2009; *Sun Journal*.	Mr. Harold Blizzard, Craven County Manager, 406 Craven Street, New Bern, NC 28560.	February 11, 2010	370072
Durham	City of Durham (08–04–4999P).	August 27, 2009; September 3, 2009; *The Herald-Sun*.	The Honorable William V. Bell, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	January 4, 2010	370086
Tennessee:					
Williamson	City of Brentwood (08–04–0312P).	October 8, 2009; October 15, 2009; *Williamson A.M.*	The Honorable Betsy Crossley, Mayor, City of Brentwood, 5211 Maryland Way, Brentwood, TN 37027.	September 22, 2009	470205
Williamson	City of Franklin (08–04–0312P).	October 8, 2009; October 15, 2009; *Williamson A.M.*	The Honorable John Schroer, Mayor, City of Franklin, 109 3rd Avenue South, Franklin, TN 37064.	September 22, 2009	470206
Texas:					
Bexar	Unincorporated areas of Bexar County (09–06–0765P).	October 9, 2009; October 16, 2009; *Daily Commercial Recorder*.	The Honorable Nelson W. Wolff, Bexar County Judge, 100 Dolorosa Street, Suite 120, San Antonio, TX 78205.	February 15, 2010	480035
Bexar	City of San Antonio (09–06–0765P).	October 9, 2009; October 16, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	February 15, 2010	480045
Brazos	City of Bryan (09–06–1530P).	October 8, 2009; October 15, 2009; *Bryan-College Station Eagle*.	The Honorable D. Mark Conlee, Mayor, City of Bryan, 300 South Texas Avenue, Bryan, TX 77803.	February 12, 2010	480082

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas	City of Balch Springs (09–06–0149P).	October 9, 2009; October 16, 2009; *Daily Commercial Record*.	The Honorable Carrie Gordon, PhD., Mayor, City of Balch Springs, 3117 Hickory Tree Road, Balch Springs, TX 75180.	February 15, 2010	480166
Harris	Unincorporated areas of Harris County (09–06–0531P).	October 12, 2009; October 19, 2009; *Houston Chronicle*.	The Honorable Edward Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	February 16, 2010	480287
Travis	City of Austin (09–06–1935P).	October 12, 2009; October 19, 2009; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	February 16, 2010	480624
Travis	City of Austin (09–06–2006P).	October 12, 2009; October 19, 2009; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	September 30, 2009	480624
Virginia: Fairfax	Unincorporated areas of Fairfax County (09–03–0421P).	October 12, 2009; October 19, 2009; *Washington Times*.	The Honorable Sharon Bulova, Chairman, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Suite 530, Fairfax, VA 22035.	February 16, 2010	515525

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 18, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8079 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Autauga (FEMA Docket No: B–1046).	City of Prattville (07–04–6309P).	February 28, 2009; March 7, 2009; *Prattville Progress*.	The Honorable Jim Byard, Jr., Mayor, City of Prattville, 101 West Main Street, Prattville, AL 36067.	February 20, 2009	010002
Madison (FEMA Docket No: B–1042).	Unincorporated areas of Madison County (09–04–0502P).	February 6, 2009; February 13, 2009; *Madison County Record*.	The Honorable Mike Gillespie, Chairman, Madison County Commission, 6994 Courthouse, Room 700, 100 Northside Square, Huntsville, AL 35801.	June 15, 2009	010151
Arizona:					
Coconino (FEMA Docket No: B–1046).	Unincorporated areas of Coconino County (08–09–1418P).	February 20, 2009; February 27, 2009; *Arizona Daily Sun*.	The Honorable Deb Hill, Chairman, Coconino County Board of Supervisors, 219 East Cherry Avenue, Flagstaff, AZ 86001.	June 29, 2009	040019
Maricopa (FEMA Docket No: B–1046).	City of Avondale (08–09–0655P).	March 5, 2009; March 12, 2009; *Arizona Business Gazette*.	The Honorable Marie Lopez, Mayor, City of Avondale, 11465 West Civic Center Drive, Suite 280, Avondale, AZ 85323.	July 10, 2009	040038
Maricopa (FEMA Docket No: B–1046).	Unincorporated areas of Maricopa County (08–09–0655P).	March 5, 2009; March 12, 2009; *Arizona Business Gazette*.	The Honorable Andrew Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	July 10, 2009	040037
Maricopa (FEMA Docket No: B–1046).	City of Tolleson (08–09–0655P).	March 5, 2009; March 12, 2009; *Arizona Business Gazette*.	The Honorable Adolfo F. Gamez, Mayor, City of Tolleson, 9555 West Van Buren Street, Tolleson, AZ 85353.	July 10, 2009	040055
Maricopa (FEMA Docket No: B–1052).	Town of Cave Creek (09–09–0129P).	February 11, 2009; February 18, 2009; *Sonoran News*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	June 18, 2009	040129
California:					
San Bernardino (FEMA Docket No: B–1044).	Town of Apple Valley (08–09–1552P).	February 13, 2009; February 20, 2009; *Apple Valley News*.	The Honorable Mark Shoup, Mayor, City of Apple Valley, 14955 Dale Evans Parkway, Apple Valley, CA 92307.	June 19, 2009	060752
San Bernardino (FEMA Docket No: B–1044).	City of Hesperia (08–09–1552P).	February 12, 2009; February 19, 2009; *Hesperia Resorter*.	The Honorable Tad Honeycutt, Mayor, City of Hesperia, 9700 7th Avenue, Hesperia, CA 92345.	June 19, 2009	060733
San Bernardino (FEMA Docket No: B–1044).	Unincorporated areas of San Bernardino County (08–09–1552P).	February 13, 2009; February 20, 2009; *San Bernardino Bulletin*.	The Honorable Paul Biane, Chairman, San Bernardino County Board of Supervisors, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	June 19, 2009	060270
San Diego (FEMA Docket No: B–1046).	City of National City (08–09–1802P).	March 3, 2009; March 10, 2009; *San Diego Union-Tribune*.	The Honorable Ron Morrison, Mayor, National City, 1243 National City Boulevard, National City, CA 91950.	July 8, 2009	060293
Shasta (FEMA Docket No: B–1052).	City of Redding (08–09–0964P).	March 9, 2009; March 16, 2009; *Record Searchlight*.	The Honorable Rick Bosetti, Mayor, City of Redding, P.O. Box 496071, Redding, CA 96001.	March 30, 2009	060360
Colorado:					
Jefferson (FEMA Docket No: B–1046).	City of Golden (09–08–0184P).	March 5, 2009; March 12, 2009; *Golden Transcript*.	The Honorable Jacob Smith, Mayor, City of Golden, 911 10th Street, Golden, CO 80401.	February 27, 2009	080090
Teller (FEMA Docket No: B–1048).	Unincorporated areas of Teller County (08–08–0921P).	March 11, 2009; March 18, 2009; *Pikes Peak Courier View*.	The Honorable James Ignatius, Chairman, Teller County Board of Commissioners, 112 North A Street, Cripple Creek, CO 80813.	July 16, 2009	080173
Teller (FEMA Docket No: B–1048).	Town of Woodland Park (08–08–0921P).	March 11, 2009; March 18, 2009; *Pikes Peak Courier View*.	The Honorable Steve Randolph, Mayor, City of Woodland Park, 220 West South Avenue, Woodland Park, CO 80866.	July 16, 2009	080175
Weld (FEMA Docket No: B–1052).	Town of Severance (08–08–0702X).	February 20, 2009; February 27, 2009; *Greeley Tribune*.	The Honorable Pierre De Milt, Mayor, Town of Severance, 231 West 4th Avenue, Severance, CO 80546.	June 29, 2009	080317
Weld (FEMA Docket No: B–1052).	Unincorporated areas of Weld County (08–08–0702X).	February 20, 2009; February 27, 2009; *Greeley Tribune*.	The Honorable David E. Long, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	June 29, 2009	080266
Florida: Seminole (FEMA Docket No: B–1046).	Unincorporated areas of Seminole County (08–04–6702P).	March 6, 2009; March 13, 2009; *Orlando Sentinel*.	The Honorable Bob Dallari, Chairman, Seminole County Board of Commissioners, 1101 East 1st Street, Sanford, FL 32771.	February 25, 2009	120289

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: Columbia (FEMA Docket No: B–1046).	Unincorporated areas of Columbia County (07–04–4253P).	March 1, 2009; March 8, 2009; *Columbia County News Times*.	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	July 6, 2009	130059
Idaho:					
Ada (FEMA Docket No: B–1042).	Unincorporated areas of Ada County (08–10–0658P).	February 6, 2009; February 13, 2009; *Idaho Statesman*.	The Honorable Fred Tilman, Chairman, Ada County Board of Commissioners, 200 West Front Street, Boise, ID 83702.	June 15, 2009	160001
Ada (FEMA Docket No: B–1042).	City of Meridian (08–10–0658P).	February 6, 2009; February 13, 2009; *Idaho Statesman*.	The Honorable Tammy de Weerd, Mayor, City of Meridian, Meridian City Hall, Suite 300, 33 East Broadway Avenue, Meridian, ID 83702.	June 15, 2009	160180
Blaine (FEMA Docket No: B–1046).	Unincorporated areas of Blaine County (09–10–0141P).	March 11, 2009; March 18, 2009; *Idaho Mountain Express*.	The Honorable Tom Bowman, Chairman, Blaine County Board of Commissioners, 206 First Avenue South, Suite 300, Hailey, ID 83333.	February 27, 2009	165167
Blaine (FEMA Docket No: B–1046).	City of Hailey (09–10–0141P).	March 11, 2009; March 18, 2009; *Idaho Mountain Express*.	The Honorable Rick Davis, Mayor, City of Hailey, 115 Main Street South, Suite H, Hailey, ID 83333.	February 27, 2009	160022
Indiana: Hamilton (FEMA Docket No: B–1044).	City of Carmel (08–05–5476P).	February 26, 2009; March 5, 2009; *Noblesville Ledger*.	The Honorable James Brainard, Mayor, City of Carmel, One Civic Square, Carmel, IN 46032.	July 6, 2009	180081
Iowa: Dubuque (FEMA Docket No: B–1042).	Unincorporated areas of Dubuque County (08–07–0804P).	February 6, 2009; February 13, 2009; *Telegraph Herald*.	The Honorable Donna Smith, Supervisor, Dubuque County Board of Supervisors, 720 Central Avenue, Dubuque, IA 52001.	June 15, 2009	190534
Louisiana:					
East Baton Rouge (FEMA Docket No: B–1046).	Unincorporated areas of East Baton Rouge Parish (08–06–2569P).	February 11, 2009; February 18, 2009; *The Advocate*.	The Honorable Melvin Holden, Mayor, East Baton Rouge Parish, 222 Saint Louis Street, 3rd Floor, Baton Rouge, LA 70802.	June 18, 2009	220058
East Baton Rouge (FEMA Docket No: B–1046).	City of Zachary (08–06–2569P).	February 12, 2009; February 19, 2009; *Zachary Plainsman*.	The Honorable Henry J. Martinez, Mayor, City of Zachary, 4700 Main Street, Zachary, LA 70791.	June 18, 2009	220061
Maine: Cumberland (FEMA Docket No: B–1042).	Town of Falmouth (09–01–0124P).	February 6, 2009; February 13, 2009; *Portland Press Herald*.	The Honorable William Armitage, Chair, Falmouth Town Council, 271 Falmouth Road, Falmouth, ME 04105.	June 15, 2009	230045
Missouri: Clay, Platte, and Jackson (FEMA Docket No: B–1042).	City of Kansas City (08–07–0725P).	February 12, 2009; February 19, 2009; *The Daily Record*.	The Honorable Mark W. Funkhouser, Mayor, City of Kansas City, City Hall, 29th Floor, 414 East 12th Street, Kansas City, MO 64106.	June 19, 2009	290173
Nevada: Clark (FEMA Docket No: B–1044).	Unincorporated areas of Clark County (09–09–0318P).	February 20, 2009; February 27, 2009; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	June 29, 2009	320003
New Mexico: Sandoval (FEMA Docket No: B–1042).	City of Rio Rancho (08–06–3060P).	February 6, 2009; February 13, 2009; *The Albuquerque Journal*.	The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144.	June 15, 2009	350146
Montana: Stillwater (FEMA Docket No: B–1055).	Unincorporated areas of Stillwater County (07–08–0854P).	July 17, 2008; July 24, 2008; *Stillwater County News*.	The Honorable Dennis R. Hoyem, Chairman, Stillwater County Board of Commissioners, P.O. Box 970, Columbus, MT 59019.	November 24, 2008	300078
North Carolina: Guilford (FEMA Docket No: B–1046).	City of Greensboro (09–04–0087P).	March 6, 2009; March 13, 2009; *Greensboro News & Record*.	The Honorable Yvonne J. Johnson, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	July 13, 2009	375351
Ohio: Lorain (FEMA Docket No: B–1048).	City of Avon Lake (08–05–5004P).	March 12, 2009; March 19, 2009; *Morning Journal*.	The Honorable Karl J. Zuber, Mayor, City of Avon Lake, 150 Avon Belden Road, Avon Lake, OH 44012.	February 27, 2009	390602
South Carolina: Jasper (FEMA Docket No: B–1046).	Unincorporated areas of Jasper County (08–04–5295P).	March 4, 2009; March 11, 2009; *Jasper County Sun*.	The Honorable Dr. George Hood, Chairman, Jasper County Council, P.O. Box 1149, Ridgeland, SC 29936.	July 9, 2009	450112
Tennessee: Nashville and Davidson (FEMA Docket No: B–1044).	Metropolitan Government of Nashville and Davidson County (08–04–5048P).	February 6, 2009; February 13, 2009; *The Tennessean*.	The Honorable Karl Dean, Mayor, Metropolitan Government of Nashville and Davidson County, 100 Metro Courthouse, Nashville, TN 37201.	June 16, 2009	470040
Texas:					
Bexar (FEMA Docket No: B–1046).	Unincorporated areas of Bexar County (09–06–0762P).	March 6, 2009; March 13, 2009; *Daily Commercial Recorder*.	The Honorable Nelson W. Wolff, Bexar County Judge, 100 Dolorosa Street, Suite 120, San Antonio, TX 78205.	July 13, 2009	480035
Brazos (FEMA Docket No: B–1042).	City of Bryan (08–06–2045P).	February 12, 2009; February 19, 2009; *Bryan-College Station Eagle*.	The Honorable Mark Conlee, Mayor, City of Bryan, 300 South Texas Avenue, Bryan, TX 77803.	June 19, 2009	480082
Collin (FEMA Docket No: B–1042).	City of Frisco (09–06–0212P).	February 6, 2009; February 13, 2009; *Frisco Enterprise*.	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	June 15, 2009	480134

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Denton (FEMA Docket No: B–1046).	Town of Copper Canyon (09–06–0214P).	March 2, 2009; March 9, 2009; *Denton Record-Chronicle*.	The Honorable Sue Tejml, Mayor, Town of Copper Canyon, 400 Woodland Drive, Copper Canyon, TX 75077.	February 25, 2009	481508
Guadalupe (FEMA Docket No: B–1042).	City of Cibolo (08–06–2221P).	February 12, 2009; February 19, 2009; *Seguin Gazette-Enterprise*.	The Honorable Johnny Sutton, Mayor, City of Cibolo, P.O. Box 826, Cibolo, TX 78108.	June 18, 2009	480267
Guadalupe (FEMA Docket No: B–1042).	Unincorporated areas of Guadalupe County (08–06–2221P).	February 12, 2009; February 19, 2009; *Seguin Gazette-Enterprise*.	The Honorable Mike Wiggins, Guadalupe County Judge, 307 West Court Street, Seguin, TX 78155.	June 18, 2009	480266
Tarrant (FEMA Docket No: B–1052).	City of Fort Worth (09–06–0411P).	March 3, 2009; March 10, 2009; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 23, 2009	480596
Tarrant (FEMA Docket No: B–1052).	City of Southlake (09–06–0528P).	March 3, 2009; March 10, 2009; *Fort Worth Star-Telegram*.	The Honorable Andy Wambsganss, Mayor, City of Southlake, 1400 Main Street, Suite 270, Southlake, TX 76092.	February 20, 2009	480612
Webb (FEMA Docket No: B–1044).	City of Laredo (08–06–2454P).	February 6, 2009; February 13, 2009; *Laredo Morning Times*.	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	June 15, 2009	480651
Webb (FEMA Docket No: B–1044).	Unincorporated areas of Webb County (08–06–2740P).	February 6, 2009; February 13, 2009; *Laredo Morning Times*.	The Honorable Danny Valdez, Webb County Judge, Webb County Courthouse, 1000 Houston Street, 3rd Floor, Laredo, TX 78040.	June 15, 2009	481059
Utah:					
Salt Lake (FEMA Docket No: B–1044).	City of Riverton (08–08–0716P).	February 12, 2009; February 19, 2009; *Salt Lake Tribune*.	The Honorable Bill Applegarth, Mayor, City of Riverton, 12765 South 1400 West, Riverton, UT 84065.	June 19, 2009	490104
Salt Lake (FEMA Docket No: B–1044).	City of South Jordan (08–08–0716P).	February 12, 2009; February 19, 2009; *Salt Lake Tribune*.	The Honorable William Kent Money, Mayor, City of South Jordan, 1600 West Towne Center Drive, South Jordan, UT 84095.	June 19, 2009	490107
Virginia: Fauquier (FEMA Docket No: B–1046).	Unincorporated areas of Fauquier County (08–03–1792P).	March 5, 2009; March 12, 2009; *Fauquier Times-Democrat*.	The Honorable R. Holder Trumbo, Jr., Chairman, Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	July 10, 2009	510055
Wisconsin:					
Dane (FEMA Docket No: B–1046).	City of Sun Prairie (08–05–1760P).	March 12, 2009; March 19, 2009; *The Star*.	The Honorable Joe Chase, Mayor, City of Sun Prairie, 300 East Main Street, Sun Prairie, WI 53590.	February 27, 2009	550573
Waukesha (FEMA Docket No: B–1044).	Unincorporated areas of Waukesha County (08–05–4338P).	February 12, 2009; February 19, 2009; *Waukesha Freeman*.	The Honorable James T. Dwyer, Chairman, Waukesha County Board of Supervisors, 515 West Moreland Boulevard, Waukesha, WI 53188.	June 19, 2009	550476

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 18, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8085 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1082]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105,

and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Gila	Town of Payson (09–09–0436P).	September 15, 2009; September 22, 2009; *Payson Roundup.*	The Honorable Kenny Evans, Mayor, Town of Payson, 303 North Beeline Highway, Payson, AZ 85541.	January 20, 2010	040107
California:					
San Diego	City of Vista (09–09–0724P).	September 18, 2009; September 25, 2009; *North County Times.*	The Honorable Morris B. Vance, Mayor, City of Vista, City Hall, 600 Eucalyptus Avenue, Vista, CA 92084.	October 5, 2009	060297
Shasta	City of Anderson (09–09–1040P).	September 23, 2009; September 30, 2009; *Anderson Valley Post.*	The Honorable Butch Schaefer, Mayor, City of Anderson, 1887 Howard Street, Anderson, CA 96007.	January 28, 2009	060359
Ventura	City of Ojai (09–09–0524P).	September 10, 2009; September 17, 2009; *Ventura County Star.*	The Honorable Joe DeVito, Mayor, City of Ojai, P.O. Box 1570, Ojai, CA 93024.	January 15, 2009	060416
Ventura	Unincorporated areas of Ventura County (09–09–0524P).	September 10, 2009; September 17, 2009; *Ventura County Star.*	The Honorable Linda F. Parks, Chairperson, Ventura County Board of Supervisors, County Government Center, 800 South Victoria Avenue, Ventura, CA 93009.	January 15, 2009	060413
Colorado:					
El Paso	City of Colorado Springs (09–08–0002P).	September 23, 2009; September 30, 2009; *The Gazette.*	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, CO 80901.	January 28, 2009	080060
Jefferson	Unincorporated areas of Jefferson County (09–08–0257P).	September 30, 2009; October 7, 2009; *High Timber Times.*	The Honorable J. Kevin McCasky, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	October 5, 2009	080087
Delaware: New Castle.	Unincorporated areas of New Castle County (09–03–0870P).	September 7, 2009; September 14, 2009; *The News Journal.*	The Honorable Christopher Coons, New Castle County Executive, 87 Reads Way Corporate Commons, New Castle, DE 19720.	August 21, 2009	105085
Florida:					
Alachua	City of Gainesville (09–04–1384P).	October 2, 2009; October 9, 2009; *The Gainesville Sun.*	The Honorable Pegeen Hanrahan, Mayor, City of Gainesville, P.O. Box 490, Station 19, Gainesville, FL 32601.	September 24, 2009	125107
Osceola	City of Kissimmee (08–04–1601P).	August 6, 2009; August 13, 2009; *Osceola News Gazette.*	The Honorable Jim Swan, Mayor, City of Kissimmee, 101 North Church Street, Kissimmee, FL 34741.	August 24, 2009	120190
Osceola	Unincorporated areas of Osceola County (08–04–1601P).	August 6, 2009; August 13, 2009; *Osceola News Gazette.*	The Honorable John "Q" Quinones, Chairman, Osceola County Board of Commissioners, One Courthouse Square, Suite 4700, Kissimmee, FL 34741.	August 24, 2009	120189
Polk	Unincorporated areas of Polk County (09–04–5687P).	September 9, 2009; September 16, 2009; *Polk County Democrat.*	The Honorable Sam Johnson, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	August 31, 2009	120261
Georgia: DeKalb	City of Atlanta (08–04–5599P).	May 8, 2009; May 15, 2009; *Atlanta Journal-Constitution.*	The Honorable Shirley Franklin, Mayor, City of Atlanta, 55 Trinity Avenue, Atlanta, GA 30303.	May 28, 2009	135157

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois:					
Kane	City of Batavia (09–05–2286P).	September 15, 2009; September 22, 2009; *The Chronicle*.	The Honorable Jeffery D. Schielke, Mayor, City of Batavia, 100 North Island Avenue, Batavia, IL 60510.	September 1, 2009	170321
Kane	Village of Hampshire (09–05–1214P).	August 28, 2009; September 4, 2009; *Northwest Herald*.	The Honorable Jeffrey Magnussen, President, Village of Hampshire, P.O. Box 457, Hampshire, IL 60140.	August 13, 2009	170327
Kane	Unincorporated areas of Kane County (09–05–2286P).	September 15, 2009; September 22, 2009; *The Chronicle*.	The Honorable Karen McConnaughay, Chairman, Kane County Board, 719 South Batavia Avenue, Geneva, IL 60134.	September 1, 2009	1708965
McHenry	Village of Johnsburg (09–05–2578P).	August 21, 2009; August 28, 2009; *Northwest Herald*.	Mr. Edwin P. Hettermann, President, Village of Johnsburg, 1515 West Channel Beach Drive, McHenry, IL 60050.	August 17, 2009	170486
Maine: Penobscot	Town of Hampden (09–01–0938P).	September 7, 2009; September 14, 2009; *Bangor Daily News*.	The Honorable Matthew Arnett, Mayor, Town of Hampden, 106 Western Avenue, Hampden, ME 04444.	August 21, 2009	230168
Michigan: Kent	City of Grand Rapids (09–05–1087P).	July 1, 2009; July 8, 2009; *Grand Rapids Press*.	Mr. Mark De Clercq, P.E., City Engineer, City of Grand Rapids, 300 Monroe Avenue, Northwest, Grand Rapids, MI 49503.	June 23, 2009	260106
Nebraska:					
Howard	Unincorporated areas of Howard County (09–07–0907P).	September 23, 2009; September 30, 2009; *The Phonograph Herald*.	The Honorable Bill Sack, Chairman, Howard County Board of Commissioners, 1057 Kimball Road, St. Paul, NE 68873.	January 28, 2010	310446
Howard	City of St. Paul (09–07–0907P).	September 23, 2009; September 30, 2009; *The Phonograph Herald*.	The Honorable Danny Nielsen, Mayor, City of St. Paul, 704 6th Street, St. Paul, NE 68873.	January 28, 2010	310119
New Mexico:					
Santa Fe	City of Santa Fe (09–06–1398P).	September 8, 2009; September 15, 2009; *Santa Fe New Mexican*.	The Honorable David Coss, Mayor, City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504.	January 13, 2010	350070
Santa Fe	City of Santa Fe (09–06–1729P).	September 8, 2009; September 15, 2009; *Santa Fe New Mexican*.	The Honorable David Coss, Mayor, City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504.	January 13, 2010	350070
Oklahoma: Cleveland	City of Oklahoma City (08–06–3106P).	September 17, 2009; September 24, 2009; *The Oklahoman*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Street, 3rd Floor, Oklahoma City, OK 73102.	January 22, 2010	405378
Oregon:					
Marion	Unincorporated areas of Marion County (09–10–0011P).	August 14, 2009; August 21, 2009; *Statesman Journal*.	The Honorable Patti Milne, Chairman, Marion County Board of Commissioners, P.O. Box 14500, Salem, OR 97309.	July 31, 2009	410154
Marion	City of Salem (09–10–0011P).	August 14, 2009; August 21, 2009; *Statesman Journal*.	The Honorable Janet Taylor, Mayor, City of Salem, 555 Liberty Street Southeast, Room 220, Salem, OR 97301.	July 31, 2009	410167
Pennsylvania:					
Adams	City of Latimore (09–03–1567P).	September 10, 2009; September 17, 2009; *Gettysburg Times*.	The Honorable Dan Worley, Chairman, Latimore Township Board of Supervisors, 559 Old U.S. Route 15, York Springs, PA 17372.	January 15, 2010	421162
Adams	City of Reading (09–03–1567P).	September 10, 2009; September 17, 2009; *Gettysburg Times*.	The Honorable Joseph Lemmon, Chairman, Township of Reading Board of Supervisors, 50 Church Road, East Berlin, PA 17316.	January 15, 2010	420004
Tennessee:					
Knox	Unincorporated areas of Knox County (09–04–2543P).	September 4, 2009; September 11, 2009; *Knoxville News Sentinel*.	The Honorable Mike Ragsdale, Mayor, Knox County, 400 Main Street, Suite 615, Knoxville, TN 37902.	January 11, 2010	475433
Knox	City of Knoxville (09–04–2543P).	September 4, 2009; September 11, 2009; *Knoxville News Sentinel*.	The Honorable Bill Haslam, Mayor, City of Knoxville, P.O. Box 1631, Knoxville, TN 37901.	January 11, 2010	475434
Knox	City of Knoxville (09–04–3474P).	September 18, 2009; September 25, 2009; *Knoxville News Sentinel*.	The Honorable Bill Haslam, Mayor, City of Knoxville, P.O. Box 1631, Knoxville, TN 37901.	January 25, 2010	475434
Williamson	City of Brentwood (08–04–5486P).	September 10, 2009; September 17, 2009; *The Tennessean*.	The Honorable Betsy Crossley, Mayor, City of Brentwood, 5211 Maryland Way, Brentwood, TN 37027.	August 27, 2009	470205
Texas:					
Brazoria and Harris.	City of Pearland (08–06–0819P).	June 24, 2009; July 1, 2009; *Pearland Reporter-News*.	The Honorable Tom Reid, Mayor, City of Pearland, 3519 Liberty Drive, Pearland, TX 77581.	October 29, 2009	480077
Denton	Town of Trophy Club (09–06–1124P).	September 11, 2009; September 18, 2009; *Denton Record-Chronicle*.	The Honorable Nick Sanders, Mayor, Town of Trophy Club, 100 Municipal Drive, Trophy Club, TX 76262.	January 18, 2010	481606
Webb	City of Laredo (08–06–1006P).	September 2, 2008; September 9, 2008; *Laredo Morning Times*.	The Honorable Raul G. Salinas, Mayor, City of Laredo, City Hall, 1110 Houston Street, Laredo, TX 78040.	January 9, 2009	480651

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Williamson	City of Round Rock (09–06–0338P).	September 10, 2009; September 17, 2009; *Round Rock Leader.*	The Honorable Alan McGraw, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	January 15, 2010	481048
Williamson	Unincorporated areas of Williamson County (09–06–0529P).	September 10, 2009; September 17, 2009; *Round Rock Leader.*	The Honorable Dan A. Gattis, Williamson County Judge, 710 Main Street, Suite 101, Georgetown, TX 78626.	January 15, 2010	481079

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 18, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8084 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1079]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Riverside	Unincorporated areas of Riverside County (08–09–0430P).	August 7, 2009; August 14, 2009; *The Press-Enterprise*.	The Honorable Jeff Stone, Chairman, Riverside County Board of Supervisors, P.O. Box 1486, Riverside, CA 92502.	December 14, 2009	060246
Riverside	City of Temecula (08–09–0430P).	August 7, 2009; August 14, 2009; *The Press-Enterprise*.	The Honorable Maryann Edwards, Mayor, City of Temecula, P.O. Box 9033, Temecula, CA 92589.	December 14, 2009	060742
Santa Barbara	Unincorporated areas of Santa Barbara County (09–09–0651P).	August 12, 2009; August 19, 2009; *Santa Barbara News-Press*.	The Honorable Joseph Centeno, Chairman, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101.	December 17, 2009	060331
Santa Barbara	City of Solvang (09–09–0651P).	August 12, 2009; August 19, 2009; *Santa Barbara News-Press*.	The Honorable David Smyser, Mayor, City of Solvang, P.O. Box 107, Solvang, CA 93464.	December 17, 2009	060756
Colorado:					
Arapahoe	City of Aurora (09–08–0733P).	July 23, 2009; July 30, 2009; *Aurora Sentinel*.	The Honorable Ed Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	July 17, 2009	080002
Boulder	Unincorporated areas of Boulder County (09–08–0486P).	August 7, 2009; August 14, 2009; *The Daily Camera*.	The Honorable Ben Pearlman, Chairman, Boulder County Board of Commissioners, Boulder County Courthouse, P.O. Box 471, Boulder, CO 80306.	December 14, 2009	080023
Florida: Leon	City of Tallahassee (09–04–1668P).	August 11, 2009; August 18, 2009; *Tallahassee Democrat*.	The Honorable John Marks, Mayor, City of Tallahassee, 300 South Adams Street, Tallahassee, FL 32301.	December 16, 2009	120144
Hawaii: Hawaii	Unincorporated areas of Hawaii County (08–09–1858P).	August 12, 2009; August 19, 2009; *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	December 17, 2009	155166
Kansas: Johnson	City of Mission (09–07–0751P).	August 18, 2009; August 25, 2009; *The Legal Record*.	The Honorable Laura McConwell, Mayor, City of Mission, 6090 Woodson Road, Mission, KS 66202.	August 4, 2009	200170
Mississippi:					
DeSoto	Unincorporated areas of DeSoto County (09–04–2542P).	August 11, 2009; August 18, 2009; *DeSoto Times-Tribune*.	The Honorable Tommy Lewis, President, DeSoto County Board of Supervisors, 365 Losher Street, Suite 310, Hernando, MS 38632.	December 16, 2009	280050
DeSoto	City of Olive Branch (09–04–2542P).	August 11, 2009; August 18, 2009; *DeSoto Times-Tribune*.	The Honorable Samuel P. Rikard, Mayor, City of Olive Branch, 9200 Pigeon Roost Road, Olive Branch, MS 38654.	December 16, 2009	280286
Missouri:					
Phelps	Unincorporated areas of Phelps County (09–07–0033P).	August 11, 2009; August 18, 2009; *Rolla Daily News*.	The Honorable Randy Verkamp, Presiding Commissioner, Phelps County Commission, 200 North Main Street, Rolla, MO 65401.	December 16, 2009	290824
Phelps	City of Rolla (09–07–0033P).	August 11, 2009; August 18, 2009; *Rolla Daily News*.	The Honorable William Jenks III, Mayor, City of Rolla, P.O. Box 979, Rolla, MO 65401.	December 16, 2009	290285
Montana: Mineral	Unincorporated areas of Mineral County (09–08–0372P).	August 12, 2009; August 19, 2009; *Mineral Independent*.	The Honorable Clark Conrow, Chairman, Mineral County Board of Commissioners, 300 River Street, Superior, MT 59872.	November 30, 2009	300159
Nevada:					
Washoe	City of Reno (09–09–0999P).	August 11, 2009; August 18, 2009; *Reno Gazette-Journal*.	The Honorable Robert Cashell, Mayor, City of Reno, P.O. Box 1900, Reno, NV 89505.	December 16, 2009	320020
Washoe	Unincorporated areas of Washoe County (09–09–0999P).	August 11, 2009; August 18, 2009; *Reno Gazette-Journal*.	The Honorable Robert Larkin, Chair, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520.	December 16, 2009	320019
New Jersey: Monmouth.	Township of Marlboro (09–02–0785P).	August 13, 2009; August 20, 2009; *Asbury Park Press*.	The Honorable Jonathan Hornik, Mayor, Township of Marlboro, 1979 Township Drive, Marlboro, NJ 07746.	December 18, 2009	340310
New Mexico: Bernalillo.	City of Albuquerque (08–06–2955P).	August 12, 2009; August 19, 2009; *The Albuquerque Journal*.	The Honorable Martin J. Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	December 17, 2009	350002
Oregon:					
Clackamas	Unincorporated areas of Clackamas County (09–10–0019P).	August 11, 2009; August 18, 2009; *The Oregonian*.	The Honorable Lynn Peterson, Chair, Clackamas County Board of Commissioners, 2051 Kaen Road, Oregon City, OR 97045.	December 16, 2009	415588
Clackamas	City of Wilsonville (09–10–0019P).	August 11, 2009; August 18, 2009; *The Oregonian*.	The Honorable Tim Knapp, Mayor, City of Wilsonville, 11615 Southwest Jamaica, Wilsonville, OR 97070.	December 16, 2009	410025
Pennsylvania:					
Delaware	Borough of Eddystone (08–03–1531P).	August 13, 2009; August 20, 2009; *Delaware County Daily Times*.	The Honorable Ralph Orr, Mayor, Borough of Eddystone, 1300 East 12th Street, Eddystone, PA 19022.	December 18, 2009	420413
Delaware	Township of Ridley (08–03–1531P).	August 13, 2009; August 20, 2009; *Delaware County Daily Times*.	The Honorable Robert J. Willert, President, Township of Ridley Board of Commissioners, 100 East MacDade Boulevard, Folsom, PA 19033.	December 18, 2009	420429

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Delaware	Borough of Ridley Park (08–03–1531P).	August 13, 2009; August 20, 2009; *Delaware County Daily Times*.	The Honorable Hank Eberle, Jr., Mayor, Borough of Ridley Park, 105 East Ward Street, Ridley Park, PA 19078.	December 18, 2009	420430
Texas:					
Bexar	City of San Antonio (08–06–2074P).	August 12, 2009; August 19, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	December 17, 2009	480045
Bexar	City of San Antonio (08–06–2153P).	August 12, 2009; August 19, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	December 17, 2009	480045
Collin	City of McKinney (09–06–1503P).	August 14, 2009; August 21, 2009; *McKinney Courier-Gazette*.	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	August 31, 2009	480135
Gillespie	Unincorporated areas of Gillespie County (09–06–0312P).	July 29, 2009; August 5, 2009; *Fredericksburg Standard Radio Post*.	The Honorable Mark Stroeher, Gillespie County Judge, 101 West Main Street, Fredericksburg, TX 78624.	December 3, 2009	480696
Utah: Davis	City of Centerville (09–08–0637P).	August 13, 2009; August 20, 2009; *Salt Lake Tribune*.	The Honorable Ronald G. Russell, Mayor, City of Centerville, 73 West Ricks Creek Way, Centerville, UT 84014.	July 31, 2009	490040

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 18, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8083 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1088]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Cochise	Unincorporated areas of Cochise County (09–09–2171P).	October 12, 2009; October 19, 2009; *Sierra Vista Herald.*	The Honorable Richard Searle, Vice Chairman, Cochise County Board of Supervisors, 1415 West Melody Lane, Building G, Bisbee, AZ 85603.	February 16, 2010	040012
Maricopa	City of El Mirage (09–09–1385P).	October 29, 2009; November 5, 2009; *Arizona Business Gazette.*	The Honorable Fred Waterman, Mayor, City of El Mirage, P.O. Box 26, El Mirage, AZ 85335.	October 22, 2009	040041
Maricopa	Unincorporated areas of Maricopa County (09–09–1385P).	October 29, 2009; November 5, 2009; *Arizona Business Gazette.*	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	October 22, 2009	040037
Maricopa	City of Surprise (09–09–1385P).	October 29, 2009; November 5, 2009; *Arizona Business Gazette.*	The Honorable Lyn Truitt, Mayor, City of Surprise, 12425 West Bell Road, Surprise, AZ 85374.	October 22, 2009	040053
Yavapai	Town of Prescott Valley (09–09–1988P).	November 2, 2009; November 9, 2009; *Prescott Daily Courier.*	The Honorable Harvey Skoog, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314.	March 9, 2010	040121
California:					
Alameda	City of Fremont (09–09–0112P).	October 12, 2009; October 19, 2009; *The Argus.*	The Honorable Robert Wasserman, Mayor, City of Freemont, 3300 Capitol Avenue, Fremont, CA 94538.	February 16, 2010	065028
San Diego	City of Chula Vista (09–09–0757P).	October 16, 2009; October 23, 2009; *The Star News.*	The Honorable Cheryl Cox, Mayor, City of Chula Vista, 276 4th Avenue, Chula Vista, CA 91910.	November 2, 2009	065021
San Diego	City of San Marcos (08–09–1888P).	October 16, 2009; October 23, 2009; *North County Times.*	The Honorable James Desmond, Mayor, City of San Marcos, One Civic Drive, San Marcos, CA 92069.	February 20, 2010	060296
Colorado:					
Larimer	City of Fort Collins (08–08–0893P).	October 16, 2009; October 23, 2009; *Fort Collins Coloradoan.*	The Honorable Darin Atteberry, Manager, City of Fort Collins, 300 LaPorte Avenue, Fort Collins, CO 80521.	February 22, 2010	080102
Larimer	Unincorporated areas of Larimer County (08–08–0893P).	October 16, 2009; October 23, 2009; *Fort Collins Coloradoan.*	The Honorable Frank Lancaster, Manager, Larimer County, P.O. Box 1190, Fort Collins, CO 80522.	February 22, 2010	080101
Mesa	Unincorporated areas of Mesa County (09–08–0604P).	October 16, 2009; October 23, 2009; *Daily Sentinel.*	Mr. Steven Acquafresca, Chairman, Mesa County Board of Commissioners, P.O. Box 20000, Grand Junction, CO 81502.	March 2, 2010	080115
Connecticut:					
Middlesex	Town of Cromwell (09–01–0957P).	July 13, 2009; July 20, 2009; *Middletown Press.*	The Honorable John M. Flanders, First Selectman, Town of Cromwell, 41 West Street, Cromwell, CT 06416.	June 30, 2009	090123
New Haven	Town of Cheshire (09–01–1101P).	October 15, 2009; October 22, 2009; *Cheshire Herald.*	The Honorable Matt Hall, Chairman, Cheshire Town Council, 84 South Main Street, Cheshire, CT 06410.	February 19, 2010	090074
Florida: Duval	City of Jacksonville (09–04–2297P).	October 13, 2009; October 20, 2009; *Jacksonville Daily Record.*	The Honorable John Peyton, Mayor, City of Jacksonville, 117 West Duval Street, 4th Floor, Jacksonville, FL 32202.	November 9, 2009	20077
Georgia: Newton	City of Covington (09–04–4700P).	October 9, 2009; October 16, 2009; *The Covington News.*	Ms. Kim Carter, Mayor, City of Covington, 2194 Emory Street, Covington, GA 30014.	February 15, 2010	130144
Hawaii: Hawaii	Unincorporated areas of Hawaii County (09–09–1608P).	October 12, 2009; October 19, 2009; *Hawaii Tribune-Herald.*	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	February 16, 2010	155166
Illinois:					
Will	City of Joliet (09–05–0265P).	October 30, 2009; November 6, 2009; *Herald News.*	The Honorable Arthur Schultz, Mayor, City of Joliet, 150 West Jefferson Street, Joliet, IL 60432.	October 21, 2009	170702
Will	Unincorporated areas of Will County (09–05–0265P).	October 30, 2009; November 6, 2009; *Herald News.*	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	October 21, 2009	170695
Kentucky: Fayette	Lexington-Fayette Urban County Government (09–04–1695P).	October 7, 2009; October 14, 2009; *Lexington Herald-Leader.*	The Honorable Jim Newberry, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington, KY 40507.	September 28, 2009	210067
North Carolina: Cumberland.	Unincorporated Areas of, Cumberland County (09–04–3582P).	October 7, 2009; October 14, 2009; *Fayetteville Observer.*	Mr. James E. Martin, County Manager, Cumberland County, 117 Dick Street, Room 512, Fayetteville, NC 28301.	February 11, 2010	370076
Texas:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Johnson	City of Burleson (09–06–0485P).	October 7, 2009; October 14, 2009; *Burleson Star*.	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	February 11, 2010	485459
Travis	City of Austin (09–06–0763P).	October 27, 2009; November 3, 2009; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	March 3, 2010	480624
Travis	City of Austin (09–06–0764P).	November 4, 2009; November 11, 2009; *Austin American Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	March 11, 2010	480624
Virginia: Prince William.	Unincorporated areas of Prince William County (09–03–1773P).	October 28, 2009; November 4, 2009; *News & Messenger*.	The Honorable Corey Stewart, Chairman, Prince William County Board of Supervisors, One County Complex Court, Prince William, VA 22192.	March 4, 2010	510119
Washington:					
King	City of Redmond (08–10–0762P).	October 30, 2009; November 6, 2009; *Redmond Reporter*.	The Honorable John Marchione, Mayor, City of Redmond, P.O. Box 97010, Redmond, WA 98073.	March 8, 2010	530087
Spokane	City of Cheney (09–10–0216P).	October 16, 2009; October 23, 2009; *Spokesman Review*.	The Honorable Allan Gainer, Mayor, City of Cheney, 609 2nd Street, Cheney, WA 99004.	April 7, 2010	530175
Spokane	Unincorporated areas of Spokane County (09–10–0216P).	October 16, 2009; October 23, 2009; *Spokesman Review*.	The Honorable Todd Mielke, Chairman, Spokane County Board of Commissioners, 1116 West Broadway Avenue, Spokane, WA 99260.	April 7, 2010	530174

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 18, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8078 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 final rule involves no policies that

have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No: B–1059).	City of El Mirage (08–09–1164P).	May 7, 2009; May 14, 2009; *Arizona Business Gazette.*	The Honorable Fred Waterman, Mayor, City of El Mirage, P.O. Box 26, El Mirage, AZ 85335.	April 30, 2009	040041
Maricopa (FEMA Docket No: B–1059).	Unincorporated areas of Maricopa County (08–09–1164P).	May 7, 2009; May 14, 2009; *Arizona Business Gazette.*	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	April 30, 2009	040037
Maricopa (FEMA Docket No: B–1059).	Unincorporated areas of Maricopa County (08–09–1294P).	May 7, 2009; May 14, 2009; *Arizona Business Gazette.*	The Honorable Andrew W. Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	April 23, 2009	040037
Maricopa (FEMA Docket No: B–1059).	City of Phoenix (08–09–1294P).	May 7, 2009; May 14, 2009; *Arizona Business Gazette.*	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	April 23, 2009	040051
Maricopa (FEMA Docket No: B–1059).	City of Phoenix (08–09–1384P).	May 7, 2009; May 14, 2009; *Arizona Business Gazette.*	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	September 11, 2009	040051
Navajo (FEMA Docket No: B–1055).	Unincorporated areas of Navajo County (08–09–1857P).	April 22, 2009; April 29, 2009; *The Tribune News.*	The Honorable J.R. Despain, Chairman, Navajo County Board of Supervisors, P.O. Box 668, Holbrook, AZ 86025.	August 27, 2009	040066
California:					
Sacramento (FEMA Docket No: B–1059).	City of Elk Grove (08–09–1760P).	May 12, 2009; May 19, 2009; *The Sacramento Bee.*	The Honorable Patrick Hume, Mayor, City of Elk Grove, 8401 Laguna Palms Way, Elk Grove, CA 95758.	June 2, 2009	060767
Sacramento (FEMA Docket No: B–1059).	Unincorporated areas of Sacramento County (08–09–1760P).	May 12, 2009; May 19, 2009; *The Sacramento Bee.*	The Honorable Susan Peters, Chair, Sacramento County Board of Supervisors, 700 H Street, Suite 2450, Sacramento, CA 95814.	June 2, 2009	060262
San Diego (FEMA Docket No: B–1059).	City of Carlsbad (09–09–0276P).	May 1, 2009; May 8, 2009; *North County Times.*	The Honorable Claude A. Lewis, Mayor, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, CA 92008.	September 8, 2009	060285
Ventura (FEMA Docket No: B–1059).	Unincorporated areas of Ventura County (08–09–1921P).	May 8, 2009; May 15, 2009; *Ventura Star.*	The Honorable Steve Bennett, Chairman, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	September 14, 2009	060413
Colorado:					
Grand (FEMA Docket No: B–1059).	Town of Granby (08–08–0416P).	April 30, 2009; May 7, 2009; *Middle Park Times.*	The Honorable Jynnifer Pierro, Mayor, Town of Granby, P.O. Box 440, Granby, CO 80446.	September 8, 2009	080248
Grand (FEMA Docket No: B–1059).	Unincorporated areas of Grand County (08–08–0416P).	April 30, 2009; May 7, 2009; *Middle Park Times.*	The Honorable Nancy Stuart, Chairman, Grand County Board of Commissioners, P.O. Box 264, Hot Sulphur Springs, CO 80451.	September 8, 2009	080280
Florida: Charlotte (FEMA Docket No: B–1059).	Unincorporated areas of Charlotte County (09–04–3000P.	May 11, 2009; May 18, 2009; *Charlotte Sun-Herald.*	The Honorable Adam Cummings, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	April 30, 2009	120061
Indiana: Marion (FEMA Docket No: B–1059).	City of Indianapolis (09–05–2436P).	May 8, 2009; May 15, 2009; *Indianapolis Recorder.*	The Honorable Gregory A. Ballard, Mayor, City of Indianapolis, City-County Building, Suite 2150, 200 East Washington Street, Indianapolis, IN 46204.	April 30, 2009	180159
Missouri: St. Louis (FEMA Docket No: B–1055).	City of Richmond Heights (09–07–0908P).	April 30, 2009; May 7, 2009; *The Countian.*	The Honorable James J. Beck, Mayor, City of Richmond Heights, 1330 South Big Bend Boulevard, Richmond Heights, MO 63117.	September 8, 2009	290380
Nevada: Clark (FEMA Docket No: B–1059).	City of North Las Vegas (09–09–0019P).	May 8, 2009; May 15, 2009; *Las Vegas Review-Journal.*	The Honorable Michael L. Montandon, Mayor, City of North Las Vegas, 2200 Civic Center Drive, North Las Vegas, NV 89030.	September 14, 2009	320007

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
North Carolina:					
Pender (FEMA Docket No: B–1059).	Unincorporated Areas of Pender County (08–04–6525P).	May 6, 2009; May 13, 2009; *The Pender Post*.	Mr. Rick Benton, Manager, Pender County, 805 South Walker Street, P.O. Box 5, Burgaw, North Carolina 28425.	September 10, 2009	370344
Oklahoma: Rogers (FEMA Docket No: B–1059).	City of Catoosa (09–06–0354P).	May 6, 2009; May 13, 2009; *Catoosa Times*.	The Honorable Rita Lamkin, Mayor, City of Catoosa, P.O. Box 190, Catoosa, OK 74015.	April 29, 2009	400185
South Carolina:					
Charleston (FEMA Docket No: B–1059).	City of North Charleston (08–04–2279P).	April 30, 2009; May 7, 2009; *Post and Courier*.	The Honorable R. Keith Summery, Mayor, City of North Charleston, P.O. Box 190016, North Charleston, SC 29419.	September 3, 2009	450042
Texas:					
Brazos (FEMA Docket No: B–1059).	City of College Station (08–06–2806P).	May 11, 2009; May 18, 2009; *Bryan-College Station Eagle*.	The Honorable Ben White, Mayor, City of College Station, P.O. Box 9960, College Station, TX 77842.	June 2, 2009	480083
Dallas (FEMA Docket No: B–1059).	City of Cedar Hill (08–06–2296P).	May 8, 2009; May 15, 2009; *Dallas Morning News*.	The Honorable Rob Franke, Mayor, City of Cedar Hill, 285 Uptown Boulevard, Cedar Hill, TX 75104.	September 14, 2009	480168
Dallas (FEMA Docket No: B–1059).	City of Duncanville (08–06–2296P).	May 8, 2009; May 15, 2009; *Dallas Morning News*.	The Honorable David Green, Mayor, City of Duncanville, P.O. Box 380280, Duncanville, TX 75138.	September 14, 2009	480173
Denton (FEMA Docket No: B–1059).	City of Frisco (08–06–3220P).	May 8, 2009; May 15, 2009; *Frisco Enterprise*.	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	May 29, 2009	480134
Fort Bend (FEMA Docket No: B–1052).	Unincorporated areas of Fort Bend County (08–06–2236P).	April 16, 2009; April 23, 2009; *Fort Bend Sun*.	The Honorable Robert E. Hebert, Ph.D., Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	August 21, 2009	480228
Fort Bend (FEMA Docket No: B–1052).	City of Sugar Land (08–06–2236P).	April 16, 2009; April 23, 2009; *Fort Bend Sun*.	The Honorable James A. Thompson, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487.	August 21, 2009	480234
Galveston (FEMA Docket No: B–1059).	City of League City (08–06–3081P).	May 8, 2009; May 15, 2009; *Galveston County Daily News*.	The Honorable Toni Randall, Mayor, City of League City, 300 West Walker Street, League City, TX 77573.	April 29, 2009	485488
Utah:					
Washington (FEMA Docket No: B–1059).	City of LaVerkin (09–08–0296P).	April 23, 2009; April 30, 2009; *St. George Spectrum*.	The Honorable Karl Wilson, Mayor, City of LaVerkin, 435 North Main Street, LaVerkin, UT 84745.	August 28, 2009	490174
Washington (FEMA Docket No: B–1059).	City of Toquerville (09–08–0296P).	April 23, 2009; April 30, 2009; *St. George Spectrum*.	The Honorable Kenneth Powell, Mayor, Town of Toquerville, P.O. Box 27, Toquerville, UT 84774.	August 28, 2009	490180
Wisconsin:					
Rock (FEMA Docket No: B–1059).	Unincorporated areas of Rock County (08–05–4045P).	April 30, 2009; May 7, 2009; *Beloit Daily News*.	The Honorable J. Russell Podzilni, Chairman, Rock County Board of Supervisors, 51 South Main Street, Janesville, WI 53545.	September 11, 2009	550363
Walworth (FEMA Docket No: B–1059).	Unincorporated areas of Walworth County (08–05–4045P).	May 7, 2009; May 14, 2009; *Elkhorn Independent*.	The Honorable Nancy Russell, Chairperson, Walworth County Board of Supervisors, P.O. Box 1001, Elkhorn, WI 53121.	September 11, 2009	550462

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 22, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8049 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–000; Internal Agency Docket No. FEMA–B–1090]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2820, or (email) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Pulaski	City of Little Rock (09–06–1629P).	November 10, 2009; November 17, 2009; *Arkansas Democrat-Gazette.*	The Honorable Mark Stodola, Mayor, City of Little Rock, 500 West Markham, Suite 203, Little Rock, AR 72201.	March 17, 2010	050181
California: Riverside	City of Corona (09–09–0491P).	November 10, 2009; November 17, 2009; *Press-Enterprise.*	The Honorable Steve Nolan, Mayor, City of Corona, 400 South Vincentia Avenue, Corona, CA 92882.	March 17, 2010	060250
Colorado:					
Weld	Town of Erie (09–08–0608P).	October 30, 2009; November 6, 2009; *Greeley Tribune.*	The Honorable Andrew J. Moore, Mayor, Town of Erie, 645 Holbrook Street, Erie, CO 80516.	March 6, 2010	080181
Weld	Unincorporated areas of Weld County (09–08–0608P).	October 30, 2009; November 6, 2009; *Greeley Tribune.*	The Honorable Bill Garcia, Chairman, Weld County Board of Commissioners, 915 10th Street, Greeley, CO 80632.	March 6, 2010	080266
Georgia:					
Catoosa	Unincorporated areas of Catoosa County (09–04–1746P).	November 11, 2009; November 18, 2009; *Catoosa County News.*	The Honorable Keith Greene, Chairman, Catoosa County Board of Commissioners, 800 Lafayette Street, Ringgold, GA 30736.	March 18, 2010	130028
Harris	Unincorporated areas of Harris County (09–04–6111P).	October 22, 2009; October 29, 2009; *Harris County Journal.*	The Honorable J. Harry Lange, Chairman, Harris County Board of Commissioners, P.O. Box 365, Hamilton, GA 31811.	February 26, 2010	130338
Illinois: Will	Village of Bolingbrook (10–05–0103P).	November 5, 2009; November 12, 2009; *Bolingbrook Bugle.*	The Honorable Roger C. Claar, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	March 12, 2010	170812
Kentucky: Warren	City of Bowling Green (10–04–0070P).	November 10, 2009; November 17, 2009; *Daily News.*	The Honorable Elaine Walker, Mayor, City of Bowling Green, P.O. Box 430, Bowling Green, KY 42101.	October 30, 2009	210219
Maryland: Carroll	City of Westminster (09–03–0356P).	November 16, 2009; November 23, 2009; *Carroll County Times.*	The Honorable Kevin R. Utz, Mayor, City of Westminster, 1838 Emerald Hill Lane, Westminster, MD 21157.	March 23, 2010	240018
Michigan: Oakland	City of Southfield (10–05–0105P).	November 10, 2009; November 17, 2009; *Oakland Press.*	The Honorable Brenda L. Lawrence, Mayor, City of Southfield, 26000 Evergreen Road, Southfield, MI 48076.	March 17, 2010	260179

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nebraska: Saunders	City of Ashland (09–07–2079P).	November 5, 2009; November 12, 2009; *Ashland Gazette*.	The Honorable Paul Lienke, Mayor, City of Ashland, 2304 Silver Street, Ashland, NE 68003.	March 12, 2010	310196
Pennsylvania:					
Dauphin	Township of Lower Paxton (09–03–1723P).	November 9, 2009; November 16, 2009; *Patriot News*.	The Honorable William Hawk, Chairman, Board of Supervisors, Lower Paxton Township, 425 Prince Street, Harrisburg, PA 17109.	March 16, 2010	420384
Tennessee:					
Rutherford	City of Murfreesboro (09–04–0707P).	October 28, 2009; November 4, 2009; *Daily News Journal*.	The Honorable Thomas Bragg, Mayor, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130.	March 4, 2010	470168
Rutherford	Unincorporated areas of Rutherford County (09–04–0707P).	October 28, 2009; November 4, 2009; *Daily News Journal*.	The Honorable Ernest G. Burgess, Mayor, Rutherford County, 20 North Public Square, Room 101, Murfreesboro, TN 37130.	March 4, 2010	470165
Texas:					
Bexar	City of San Antonio (09–06–0484P).	November 6, 2009; November 13, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	November 23, 2009	480045
Bexar	City of San Antonio (09–06–1554P).	November 5, 2009; November 12, 2009; *Daily Commercial Recorder*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	March 12, 2010	480045
Collin	City of Allen (09–06–0276P).	November 12, 2009; November 19, 2009; *Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	March 19, 2010	480131
Collin	City of Plano (09–06–0276P).	November 12, 2009; November 19, 2009; *Plano Star Courier*.	The Honorable Phil Dyer, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.	March 19, 2010	480140
Dallas	City of Garland (09–06–0866P).	November 6, 2009; November 13, 2009; *Dallas Morning News*.	The Honorable Ronald E. Jones, Mayor, City of Garland, P.O. Box 469002, Garland, TX 75046.	March 13, 2010	485471
Dallas	City of Glenn Heights (09–06–2323P).	July 10, 2009; July 17, 2009; *Focus Daily News*.	The Honorable Clark Choate, Mayor, City of Glenn Heights, 1938 South Hampton Road, Glenn Heights, TX 75154.	November 16, 2009	481265
Virginia:					
City of Hampton	City of Hampton (09–03–0030P).	November 9, 2009; November 16, 2009; *Daily Press*.	The Honorable Molly Joseph Ward, Mayor, City of Hampton, 22 Lincoln Street, 8th Floor, Hampton, VA 23669.	March 16, 2009	515527
City of Newport News.	City of Newport News (09–03–0030P).	November 9, 2009; November 16, 2009; *Daily Press*.	The Honorable Joe S. Frank, Mayor, City of Newport News, 2400 Washington Avenue, Newport News, VA 23607.	March 16, 2009	510103
York	Unincorporated areas of York County (09–03–0030P).	November 9, 2009; November 16, 2009; *Daily Press*.	The Honorable Walter Zaremba, Chairman, York County Board of Supervisors, 224 Ballard Street, Yorktown, VA 23690.	March 16, 2009	510182
Wyoming:					
Natrona	City of Casper (09–08–0351P).	November 12, 2009; November 19, 2009; *Casper Star-Tribune*.	The Honorable Kenyne Schlager, Mayor, City of Casper, 200 North David Street, Casper, WY 82601.	October 30, 2009	560037
Natrona	Unincorporated areas of Natrona County (09–08–0351P).	November 12, 2009; November 19, 2009; *Casper Star-Tribune*.	The Honorable Robert Hendry, Chairman, Natrona County Board of Commissioners, 200 North Center Street, Room 115 Casper, WY 82601.	October 30, 2009	560036

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 18, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8042 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1116]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The BFE changes are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New York: Suffolk	Town of Southampton (09–02–1473P).	March 4, 2010; March 11, 2010; *Southampton Press.*	The Honorable Anna Throne-Holst, Southampton Town Board Supervisor, 116 Hampton Road, Southampton, NY 11968.	August 19, 2010	365342
Pennsylvania: York	Township of Dover (09–03–1919P).	March 5, 2010; March 12, 2010; *York Daily Record.*	Mr. Curtis Kann, Chairperson, Township of Dover Board of Supervisors, 2480 West Canal Road, Dover, PA 17315.	February 26, 2010	420920
Texas:					
Collin	City of Allen (09–06–3028P).	November 6, 2009; November 13, 2009; *McKinney Courier-Gazette.*	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	October 28, 2009	480131
Collin	City of McKinney (09–06–3028P).	November 6, 2009; November 13, 2009; *McKinney Courier-Gazette.*	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, P.O. Box 517, McKinney, TX 75069.	October 28, 2009	480135
Travis	City of Austin (09–06–3398P).	March 10, 2010; March 17, 2010; *Austin American-Statesman.*	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	July 15, 2010	480624

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 24, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8047 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

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: 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 in 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: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (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 Deputy Federal Insurance and Mitigation Administrator 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. FEMA 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 final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not 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 final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final 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 ∧Elevation in meters (MSL) Modified	Communities affected
Madison County, Alabama, and Incorporated Areas Docket No.: FEMA–B–1057			
Aldridge Creek	Approximately 0.4 mile upstream of Green Cove Road	+576	City of Huntsville.
	Approximately 75 feet downstream of Drake Avenue	+682	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Huntsville

Maps are available for inspection at 308 Fountain Circle Southwest, Huntsville, AL 35804.

Sebastian County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1035			
Adamson Creek	At South Coker Street	+494	City of Greenwood, Unincorporated Areas of Sebastian County.
	Approximately 2,000 feet upstream of U.S. Route 7	+533	
Heartsill Creek	At West Denver Street	+510	City of Greenwood, Unincorporated Areas of Sebastian County.
	Approximately 180 feet downstream of Hester Cut Road	+575	
Heartsill Creek Tributary 1	At the confluence with Heartsill Creek	+525	City of Greenwood.
	Approximately 700 feet upstream of Meadow Bridge Drive intersection.	+547	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) Modified	Communities affected
Hester Creek	Approximately 280 feet upstream of West Center Street	+510	City of Greenwood, Unincorporated Areas of Sebastian County.
	Approximately 600 feet upstream of Hester Cut Road	+547	
Little Vache Grasse Creek	At the confluence with Unnamed Stream	+402	City of Barling
	Approximately 4,060 feet upstream of Rye Hill Road	+479	
Little Vache Grasse Creek Tributary 9.	At the confluence with Little Vache Grasse Creek	+434	City of Barling.
	Approximately 3,580 feet upstream of Unnamed Road	+478	
Unnamed Stream	At the confluence with Little Vache Grasse Creek	+445	City of Barling.
	Approximately 1,260 feet upstream of the confluence with Little Vache Grasse Creek.	+448	
Vache Grasse Creek	Approximately 5,200 feet downstream of Arkansas Highway 10.	+484	City of Greenwood, Unincorporated Areas of Sebastian County.
	Approximately 1,800 feet upstream of Steward Court	+541	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Barling

Maps are available for inspection at 304 Church Street, Barling, AR 72923.

City of Greenwood

Maps are available for inspection at 35 South 6th Street, Fort Smith, AR 72901.

Unincorporated Areas of Sebastian County

Maps are available for inspection at 35 South 6th Street, Fort Smith, AR 72901.

Crawford County, Missouri, and Incorporated Areas
Docket Nos.: FEMA–B–1028

Mermac River	Approximately 5,000 feet downstream of City of Steelville corporate limits.	+708	Unincorporated Areas of Crawford County.
	Approximately 150 feet upstream of Highway 19	+719	
Whittenburg Creek	Approximately 120 feet downstream of Snake Road	+725	Unincorporated Areas of Crawford County, City of Steelville.
	Approximately 275 feet upstream of Highway 8	+734	
Yadkin Creek	At the confluence with Whittenburg Creek	+731	Unincorporated Areas of Crawford County.
	Approximately 900 feet upstream of City of Steelville corporate limits.	+790	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Steelville

Maps are available for inspection at 204 3rd Street, Steelville, MO 65565.

Unincorporated Areas of Crawford County

Maps are available for inspection at 302 Main Street, Steelville, MO 65565.

Stone County, Missouri, and Incorporated Areas
Docket Nos.: FEMA–B–1028 and FEMA–B–1029

Crane Creek	Approximately 960 feet downstream of City of Crane corporate limits.	+1109	Unincorporated Areas of Stone County.
	Approximately 430 feet upstream of City of Crane corporate limits.	+1128	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) Modified	Communities affected

Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Stone County

Maps are available for inspection at 108 4th Street, Galena, MO 65656

Bee County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1032

Salt Branch	Intersection of Unnamed Road and Salt Branch	+163	Unincorporated Areas of Bee County.
	Approximately 249 feet downstream of Emily Drive	+184	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Bee County

Maps are available for inspection at the Bee County Courthouse, 105 West Corpus Christi Street, Beeville, TX 78102

Nacogdoches County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1043

Bayou La Nana	Approximately 1,246 feet upstream of the confluence with Egg Nog Branch.	+248	Unincorporated Areas of Nacogdoches County.
	Approximately 523 feet downstream of Loop 224	+255	
Bayou La Nana	Approximately 921 feet upstream of Loop 224	+317	Unincorporated Areas of Nacogdoches County, City of Nacogdoches.
	Just upstream of Old Post Oak Road	+320	
Bonita Creek	Approximately 729 feet upstream of Loop 224	+355	Unincorporated Areas of Nacogdoches County, City of Nacogdoches.
	Just upstream of U.S. Route 59	+373	
Egg Nog Branch	Approximately 1,246 feet upstream of the confluence with Bayou La Nana.	+248	Unincorporated Areas of Nacogdoches County, City of Nacogdoches.
	Approximately 727 feet downstream of Loop 224	+284	
Toliver Branch	At the confluence with Bayou La Nana	+317	Unincorporated Areas of Nacogdoches County, City of Nacogdoches.
	Just upstream of Old Post Oak Road	+320	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Nacogdoches

Maps are available for inspection at City Hall, 202 East Pillar Street, Nacogdoches, TX 75963.

Unincorporated Areas of Nacogdoches County

Maps are available for inspection at 101 West Main Street, Nacogdoches, TX 75961.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 26, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–8059 Filed 4–8–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 393

[Docket No. MARAD–2010–0035]

RIN 2133–AB70

America's Marine Highway Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: On October 9, 2008, the Department of Transportation published an interim final rule that established America's Marine Highway Program, under which the Secretary will designate marine highway corridors and identify and support short sea transportation projects to expand domestic water transportation services as an alternative means of moving containerized and wheeled freight cargoes; mitigate the economic, environmental and energy costs of landside congestion; integrate the marine highway into the transportation planning process; and research improvements in efficiencies and environmental sustainability. This action is required by Public Law 110–140, the Energy Independence and Security Act of 2007. The interim final rule solicited comments, which are discussed in the "Section by Section Review" below and incorporated in this final rule. In addition, the interim final rule sought recommendations for designation of Marine Highway Corridors. This rule adopts the interim final rule, addresses Marine Highway Corridors (and continues to solicit recommendations for Marine Highway Corridor recommendations), and establishes eligibility requirements, criteria and information necessary to apply for designation as a Marine Highway Project by the Secretary of Transportation. Solicitations from applicants desiring Marine Highway Project designation will be initiated through notification in the **Federal Register** at a future date. This rule also sets forth the manner in which the Department of Transportation will identify and recommend solutions to impediments to expanded use of marine highways and lays the groundwork for coordinating with States, private transportation providers, and local and Tribal governments, and conducting research related to marine highway development. The program should improve system capacity and efficiency, air quality, highway safety, and national security.

DATES: This final rule is effective April 9, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Gordon, Office of Intermodal System Development, Marine Highways and Passenger Services, at (202) 366–5468, via e-mail at *michael.gordon@dot.gov,* or by writing to the Office of Marine Highways and Passenger Services, MAR–520, Suite W21–315, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Following the current economic slowdown, experts project that cargoes moving through our ports will return to pre-recession levels. In fact, freight tonnage of all types, including exports, imports, and domestic shipments, is expected to grow 73 percent by 2035 from 2008 levels ["Freight Facts and Figures 2009", U.S. Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations; Table 2–1; November 2009]. The development of a capable, cost-effective, safe and resilient transportation system is essential to handling the movement of this cargo in a manner that is efficient with respect to cost, energy usage, and environmental consequences. Since nearly all international cargos move along our surface transportation corridors to access or depart from seaports, which are major gateways for commerce, getting such cargoes to and from the major seaports could involve more usage of marine corridors to and from smaller and medium-sized maritime ports.

The challenges faced by our nation's transportation planners and policymakers involve making better use of existing infrastructure, addressing the need for more capacity in our freight corridors, and reducing the environmental impacts of transportation. In recent years, it has become increasingly evident that the Nation's existing road and rail infrastructure cannot adequately meet our future transportation needs. Land-based infrastructure expansion opportunities are limited in many critical bottleneck areas due to geography or very high right-of-way acquisition costs. This is particularly severe in urban areas where there are additional concerns about emissions from transportation sources. Investments in additional infrastructure, particularly highways, must consider the full costs to society of more greenhouse gas emissions and pollutants and, potentially, the need to pay for such emissions in future transportation fees. Accordingly, new road and rail investments may not be feasible, desirable, or cost-beneficial in many instances.

The cost of expanding our existing land-based transportation systems, along with transportation efficiency and environmental concerns, has caused many policymakers to re-focus on the underutilized transportation capacity of the Nation's waterways. To help address these challenges, America's Marine Highways can represent a viable alternative where water transportation is an option. Expanding the Marine Highways can be done in a way that reduces emissions, will require less new infrastructure than land transportation alternatives, generates significant fuel savings, and can increase resiliency in the surface transportation system. The Marine Highways, consisting of more than 25,000 miles of inland, intracoastal, and coastal waterways, have considerable room for expansion. [U.S. Army Corps of Engineers, "Waterborne Commerce of the United States" (2005).] In fact, while the inland river system, Great Lakes, and coastal fleets still move a billion metric tons of cargo each year, less than 4 percent of the Nation's domestic freight (by volume) now moves by water. However, this is down from 1957 levels, when over 31 percent moved by water ["National Transportation Statistics 2009," U.S. Department of Transportation, Research and Innovative Technology Administration—Bureau of Transportation Statistics; Table 1–52: Freight Activity in the United States: 1993, 1997, 2002, and 2007].

Water transportation can be expanded quickly and at little incremental cost to meet freight traffic needs. In addition to offering abundant and reliable capacity under normal conditions, waterways provide critical resiliency to the transportation system during emergencies when land-based freight and passenger delivery systems are damaged. Especially in urban areas, the movement of both freight and passengers by waterway can represent an excellent opportunity to improve

livability and quality of life for communities.

In recognition of the growing need to address concerns about land-based transportation efficiencies and sustainability, Congress enacted the Energy Independence and Security Act of 2007 (Energy Act), a sub-title of which requires the Secretary of Transportation (Secretary) to "establish a short sea transportation program and designate short sea transportation projects to be conducted under the program to mitigate surface congestion" [Energy Independence and Security Act of 2007, Subtitle C—Marine Transportation; Sec. 1121 Short Sea Transportation Initiative]. Among the primary program objectives listed in the Energy Act is to reduce surface congestion to maximize public benefits that include, but are not limited to, improved air quality, highway safety, and national security. Of principal concern to the Energy Act is the movement of intermodal containerized and wheeled cargos which currently move largely by rail and truck, often under congested surface conditions.

The America's Marine Highway Program envisioned by the Department of Transportation will implement the Energy Act's requirements for short sea shipping by working to bring about a seamless, energy-efficient, and climate-friendly transportation system through the creation and expansion of domestic water transportation services. To achieve these overall objectives, the program will include the development of marine highway corridors, identification and support of specific marine highway projects, the integration of the marine highway into the transportation planning process, and research to improve efficiencies and environmental sustainability. This will be accomplished through an organized outreach effort to State and local governments, private transportation providers and Tribal governments, by leveraging recent discretionary Federal transportation grants (the Transportation Investments Generating Economic Recovery, or "TIGER," Program) to realize the inherent advantages of these types of services, and working to remove impediments and identify incentives to optimize system performance.

The goal of America's Marine Highway Program is to develop and integrate these services into the overall transportation system in a self-sustaining, commercially-viable manner that also recognizes the public benefits these services create. The Marine Highway will enable more goods and people to travel by water where possible, striking a more equitable capacity balance between highway, rail and Marine Highway surface routes, making it more likely our country will realize the benefits sought by the Congress.

Discussion of Comments Received

The Department of Transportation received 95 documents reflecting 319 comments, including almost 60 corridor recommendations, to the interim final rule during the public comment period ending February 6, 2009. The largest group of commenters was 32 port authorities, followed by 21 private interests representing various types of carriers, 14 organizations representing maritime and environmental interests and 12 State departments of transportation. The remaining comments came from Congressional representatives, individual private interests, and city/county transportation and planning entities. The vast majority of comments were supportive of the Marine Highway Program.

Generally speaking, comments received can be separated into five categories:

The first category of comments consisted of more than 60 comments in general agreement with the rulemaking and did not propose any changes to the rule.

The second category of comments contained nearly 40 suggestions that would require changes to the Energy Independence and Security Act of 2007, United States Code or other Federal Statutes and, therefore, could not be incorporated into the rule. Where appropriate, these comments are summarized in the section-by-section discussion.

The third category of comments consisted of more than 100 corridor recommendations, endorsements of recommendations, or comments that addressed specific services, systems, proposals or geographic areas. Of these, 30 are related either to the definition of Marine Highway Corridors, or suggestions on how to interpret corridors as they are defined in the Interim Final Rule. Ten comments supported corridor recommendations made by other entities. Corridor recommendations are addressed in section 393.3 (Marine Highway Corridors) of this rule. Another ten comments in this grouping were deemed more appropriate to the development of potential future Marine Highway Project applications and are not addressed in this rule.

The fourth category of about 40 comments consisted of remarks and suggestions that are either beyond the scope of the Marine Highway Program, or determined not appropriate incorporation for incorporation in the final rule. However, because these may be helpful to other programs, they have been provided to appropriate Federal entities and summarized in the applicable section-by-section discussion.

Six comments in this category proposed that the Marine Highway Program be fully funded through upcoming Surface Transportation Reauthorization. One comment proposed that the Department of Transportation receive funding to execute the research component of the program in order to establish a nationwide approach to the challenges facing vessel and terminal design, construction, and other system needs. Another suggested that the Department of Transportation identify research funding to examine issues related to Marine Highway Implementation. Nine other comments proposed inclusion of Canadian Maritime Provinces and Mexico in the program. Other suggestions addressed worker compensation rights, maritime academies, and other activities beyond the scope of the Marine Highway Program. Numerous comments (40) proposed specific incentives or solutions to perceived impediments to expansion of the marine highways. Of these, the greatest number of comments (13) focused on the degree to which collection of Harbor Maintenance Tax acts as an impediment to the development of the Marine Highway Program and all proposed waiving the tax for domestic waterborne freight and passenger movements. This ad valorem tax is charged on cargoes imported to the U.S. and pays for channel dredging that allows access for deep draft ships to U.S. ports. However, in its current form, the same cargo is subjected to the tax a second time if it moves from the port of arrival to another U.S. destination by water. The tax is not charged if this second movement of the cargo is by landside modes.

The final category of comments contained more than 75 suggestions that could be implemented at the discretion of the Secretary of Transportation. The Department of Transportation was open to all suggestions in this category and gave them careful consideration. These comments, along with the Department of Transportation's response, are captured in the section-by-section discussion that follows.

Section-by-Section Discussion

This section discusses comments submitted on each section of the rule

along with an explanation of any changes that have been made from the Interim Rule to the Final Rule. All references to revisions or changes refer/pertain to language that was originally proposed in the Interim Final Rule, as amended.

Section 393.0

The Department of Transportation received 28 comments specifically pertaining to the summary and environmental assessment portions of the program introduction. Six comments related to types of cargo covered by the Marine Highway Program and nine comments pertained to the inclusion of Mexico and Canada's Maritime Provinces. These comments will be addressed in section 393.2 (Definitions). While many comments asserted that expanding Marine Highway use will have positive impacts on the environment, five commenters made specific recommendations regarding this section. These comments are discussed below.

Environmental Considerations

The Department of Transportation received comments from five respondents on this section regarding three general areas: National Environmental Policy Act compliance, the Endangered Species Act, and the Clean Air Act, which are addressed individually below:

National Environmental Policy Act (NEPA): Commenters suggested that a programmatic environmental review be conducted for the America's Marine Highway Program prior to issuance of the final rule to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The proposed rule for the America's Marine Highway Program is promulgating procedural rules for how Marine Highway Corridors will be designated, and the procedure for proposing Marine Highway Projects. These new regulations do not amount to a major Federal action requiring NEPA analysis because the regulations are procedural in nature and only set forth protocol for future actions that would be subject to NEPA. *See Piedmont Environmental Council* v. *Federal Energy Regulatory Commission,* 558 F.3d 304, 315–17 (4th Cir. 2009). Designation of Marine Highway Corridors will only identify existing landside corridors that could, in the future, benefit from marine transportation. The location, scope and nature of any new or expanded services are not yet known. In addition, the extent of any Federal action, including funding (if any) is not yet known. Conducting an environmental review pursuant to NEPA will not provide a meaningful analysis until: (1) There is a concrete determination of what role the Federal government might play in encouraging such services, (2) the geographic footprint of the program is determined and; (3) potential Marine Highway projects are proposed. Without this information, a NEPA analysis would not present a credible forward look and would therefore not be a useful tool for basic program planning. Once project applications are received, an environmental review under NEPA will be conducted to assess the environmental effects of the proposed project(s). *See* Piedmont, 558 F.3d at 317 (4th Cir. 2009). The Environmental Considerations and other sections of the rule were revised to reflect this and to clarify the topic.

—Part of section 393.3(d) was separated into section 393.3(c) in order to more clearly note the procedural requirements for submitting requests for corridor designations and the actions which may be taken by the Department of Transportation after a corridor has been designated.

—Section 393.4(d) has been supplemented to include language that indicates the Department of Transportation will also evaluate projects or groups of projects along a corridor based on the results of an environmental review.

—Section 393.4(e)(3) has been supplemented to include language to provide greater guidance on the information necessary for the Department of Transportation to conduct the environmental review of the proposed project or groups of projects along a corridor.

One commenter noted that the Maritime Administration is required to comply with its own Administrative Order 600–1 (Procedures for Considering Environmental Impacts). As required by the order, the Coordinator of Environmental Activities has been, and will continue to be consulted regarding the program to ensure appropriate and timely actions and compliance with the Agency order. Additionally, to ensure a continuing dialogue with environmental interests, the Department of Transportation is establishing a new advisory board under section 393.5(e) to identify impediments and recommend solutions to increased use of the Marine Highway.

These respondents also noted that, in evaluating the overall benefits or impacts on the public and the environment and other factors, all aspects should be considered, including shifts in routes and congestion, redistribution of land-based transportation and cargo handling infrastructure, and negative impacts of new or increased waterway use. The Department of Transportation agrees that there are a number of factors that will have to be considered and appreciates the respondents' suggestions. The Department intends to use the Marine Highway Project application and review process to identify the appropriate factors and collect relevant information for the assessment including whether or not some individual projects should be grouped (*e.g.,* along a corridor) under a single NEPA analysis as appropriate.

Endangered Species Act: Two respondents recommended that the Department of Transportation take actions, as appropriate under the Endangered Species Act (ESA), including commencement of the consultation process under section 7 of the ESA. Without specific project proposals, however, this action would be premature for this rulemaking.

Clean Air Act: Two commenters noted that approval of individual Marine Highway Projects may involve specific actions under the Clean Air Act in cases where State Implementation Plans are required. The Department of Transportation notes the comment and continues to work closely with the EPA in development of this program.

Green Shipping Design and Operation: Two commenters noted that there are a number of affirmative actions that the Department of Transportation can take to maximize the benefits and minimize any adverse impacts of Marine Highway services, both in the short and long term. The Department of Transportation agrees. The Department of Transportation has engaged government and academia to begin development of a program that recognizes the activities of Marine Highway service providers (both afloat and shoreside) that exceed current standards of responsibility in emissions reduction, energy conservation, ballast and discharge water management, endangered species protection, and other categories. Several elements of projects are also intended to address environmental responsibility, including potential relief for surface transportation congestion related environmental, energy or safety benefits (in the form of reduced vehicle miles traveled). In addition, language in Section 393.4(e) (Application for Designation as a Marine Highway Project) has been revised to both encourage participation in and provide documentation of participation

in environmental or other conservation programs.

Section 393.1 Purpose

The Agency received only one comment regarding this section. The commenter suggested expanding the statement regarding the goals of Marine Highway Project Designations (Section 393.1(b)(2)) to go beyond designating Marine Highway Projects solely to "mitigate landside congestion," arguing that the summary goes on to further identify the goal of providing "greatest benefit to the public." While the Act specified the purpose of project designation, the Government Accountability Office (GAO), in a report on this topic entitled, "Freight Transportation: Short Sea Shipping Option Shows Importance of Systematic Approach to Public Investment Decisions (July 2005)" (GAO–05–768, July 2005), proposed that public involvement should be determined based on "public benefits," with which the Department of Transportation concurs. This paragraph (and the Purpose statement in Section 393.4(b)) was revised to more clearly articulate these complementary objectives.

Section 393.2 Definitions

The Agency received more than 30 comments that are best addressed in this section. Comments focused on the definition, scope or application of Marine Highway Corridors, proposed means of configuring or grouping corridors and water routes that have no corresponding landside transportation corridors, the inclusion of Mexico as well as expanded portions of Canada in the program, cargos to be included within the scope of the program, and entities eligible to be Project Sponsors.

Marine Highway Corridor: The Department of Transportation received 11 comments addressing the definition of a Marine Highway Corridor, or suggesting how corridors should be viewed. Comments included whether a port/terminal is included in a "Marine Highway Corridor," and suggested that smaller ports and terminals, including niche ports that handle specific commodities and passengers should be included in corridors. After further consideration of these comments and the intended purpose of Marine Highway Corridors, the Department of Transportation amended the definition to be broader and more descriptive of the land route that Marine Highway expansion would benefit than the waterways, ports and terminals that actually provide the relief. This is more consistent with the Act's language that calls for the designation of short sea transportation routes as "extensions of the surface transportation system," and its purpose to "focus public and private efforts to use the waterways to relieve landside congestion along coastal corridors."

Several comments suggested delineation of routes by either National or Regional significance, and proposed that short distance, cross harbor or inter-terminal services can also provide significant relief. The Department of Transportation concurs that both short and long distance services could offer considerable benefit, and amended the definition of Marine Highway Corridors to include "crossings" and "connectors" to address short-distance or regionally significant routes.

Additionally, several comments were received that indicated either an assumption or a recommendation to include routes or services that do not have a landside alternative, and cannot therefore relieve landside congestion. These include routes and services to Hawaii, Guam and other territorial islands. Because these routes (and services) cannot meet the program's stated purpose of relieving landside congestion, the Department of Transportation believes the inclusion of these routes or associated services falls outside the scope of the Act, and cannot be part of the Marine Highway Program. This clarification has been incorporated in the definition of Marine Highway Corridor.

Marine Highway (or Short Sea Transportation): The Department of Transportation received nine comments recommending the inclusion of Mexico and the Maritime Provinces of Canada in the definition of Marine Highway under this program. In crafting this definition, the Department of Transportation was mindful of the Act that authorized this program, which did not include Mexico, or these portions of Canada in its language. Therefore the international portion of the definition was not changed. However, it is worth noting that—outside the scope of this program—the Department of Transportation entered into a tri-lateral agreement in May 2006 with Canada and Mexico to seek opportunities to work together and expand short sea shipping services where practicable, and this initiative will continue to receive the Department of Transportation support outside of this program. Six comments were received proposing that eligible cargos be expanded to include bulk, break-bulk and heavy lift cargo. However, Section 55605 of the Energy Act defines short sea transportation as "carriage by vessel of cargo that is contained in intermodal cargo containers and loaded by crane on the vessel or loaded on the vessel by means of wheeled technology" (also reflected in "Summary" section of the Interim Final Rule). The Department of Transportation believes that the addition of bulk, break-bulk or heavy lift cargos would go beyond the scope of the authorizing legislation. However, three comments suggested that car floats or rail ferries (vessels equipped with railroad track sections to accommodate wheeled rail cars) be included in the program and the Department of Transportation agrees this meets the scope of the Energy Act. The definition of Roll-on/Roll-off (RO/RO) vessel was expanded to include rail floats.

Project Sponsor: Two comments proposed that private entities be eligible as project sponsors based on the assertion that not doing so adds a layer of difficulty that does not advance the purpose of the rule. The purpose of requiring that project sponsors be public sector entities is that the Department of Transportation believes that, should Federal funding later become available, it is not generally appropriate for the Federal government to select individual companies as the recipient of public funds. Rather, it is appropriate for the Federal government to identify those projects whose stated public benefits, offsetting savings to Federally-funded infrastructure, and likelihood to be sustainable in the long term, represent the best potential for return on public investment. It is up to the regional, State or local public sector project sponsor (including Tribal governments) to identify—through open competition—the private sector entity or entities most able perform the proposed service(s). In light of this approach, the final rule remains unchanged and reflects public sector sponsorship for both marine highway corridors and projects.

Marine Highway Project: One comment suggested that projects should include services that facilitate transfer from international-to-domestic maritime services. Others were unsure if transportation of passengers by water is eligible under the program. The Department of Transportation added language to include a definition of Marine Highway Projects under this section to better clarify the intent and eligibility criteria for projects.

Where appropriate, language elsewhere in the rule was changed to be consistent with these definitions.

Section 393.3 Marine Highway Corridors

The agency received more than 100 comments regarding Marine Highway Corridors. Of these, 59 were

recommendations for designation of specific corridors and several others endorsed a recommendation made by another entity. Other comments addressed the process of corridor designation, noted the benefits of designating corridors, and proposed options that could provide regional, local and border crossing benefits.

Generally speaking, respondents supported designation of Marine Highway Corridors, although one commenter indicated corridors may become a ponderous process with limited benefit. Conversely, another respondent believes it is a valuable way to enlarge the circle of support and engagement and facilitates cooperative arrangements. One commenter expressed concern that both Corridor recommendations and Project applications could require onerous and costly research for entities ill equipped to do so.

Ten comments cited the public benefits of marine highways, including reduced emissions per ton-mile of commercial carriage on the water in contrast to truck or rail. Another ten comments focused on the various consortiums that are, or should be, engaged in the development of marine highways, citing the need for public involvement at the local/State and Federal levels as well as from Tribal governments for private service providers (*i.e.,* carriers), or public-private partnerships. No changes to the rule were necessary in response to these comments, as public benefit and the development of stakeholder coalitions are already key elements of the program.

Numerous comments endorsed the concept of corridor designation and incorporation of DOT's Corridors of the Future and proposed that corridors include ports (both large and small), or "marine exits," harbor crossings and sub-corridors. The Department of Transportation recognizes that major arteries alone, such as the "Corridors of the Future" and others, might not fully encompass these concepts and added the terms "connectors" and "crossings" to Section 393.2 (Definitions). Connectors will provide substantial linkages to the larger corridors and crossings will be defined as short-distance routes that provide relief to congested border crossings, bridges or tunnels or offer a much shorter route than the landside alternative. Section 393.3 was revised to clarify how Marine Highway Corridors will be described and defined and the roles connectors and crossings will play in conjunction with the larger Marine Highway Corridors.

Fifty-nine Marine Highway Corridor recommendations were received in response to the Interim Final Rule. The Department of Transportation is working closely with potential Corridor sponsors to combine complimentary and interconnecting corridor proposals and develop recommended Marine Highway connectors and crossings that offer shorter, but potentially significant, water-bridges and linkages that can relieve significant bottlenecks at the local and regional level. Corridors, connectors and crossings that receive designation by the Secretary will be published on the Maritime Administration's Marine Highway Web site (*http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhi_home.htm*).

Section 393.4 Marine Highway Projects

While several comments received were specific to a single project, marine highway service or geographic area, more than 30 comments related to the content, designation process, or evaluation criteria for Marine Highway Projects. These comments are addressed in this section.

Three commenters noted the complexity of coordinating multiple agencies and entities when projects involve origins and destinations separated by relatively long distances and involving numerous jurisdictions. The Department of Transportation acknowledges this challenge and believes that the proposed approach of designating project sponsors and developing coalitions is an appropriate way to address multi-jurisdictional coordination.

Four comments recommended that the Department of Transportation recognize the benefits of dual-use vessels in Marine Highway Projects. This capability would allow vessels in commercial service to be available to the Department of Defense (DOD) should the need arise. While the Departments of Transportation and Defense recognize the considerable potential for this concept to provide sealift capacity, and are working together toward a dual-use capability with the limited funding that the Department of Defense has available for the incorporation of National Defense Features, policy and protocols are not yet in place to develop a dual-use capability. No changes to the rule are currently warranted, however, future development of the America's Marine Highway Program will incorporate dual-use programs when feasible.

Several comments pertained to Marine Highway Project Applications and the criteria by which they will be evaluated. Five commenters recommended that the Department of Transportation recognize the public benefits that new or expanded services offer in terms of transportation system resiliency and redundancy, especially following natural or man-made events that can cripple landside corridors. The Department of Transportation has modified both the information required in the application (Section 393.4(e)) and the evaluation criteria to reflect this public benefit. Another comment pointed out the additional public benefit that shifting oversize and overweight containerized or trailerized cargo from roadways can offer because these cargos cause a disproportionate amount of damage to road surfaces, bridges and tunnels. Language was added to Section 393.4(e)(1)(D) and the evaluation criteria to address this benefit.

One commenter asserted that project designation should be based primarily on the ability to demonstrate a clear path to profitability. While the Department of Transportation agrees that the ability of a project to ultimately become self supporting is an important criterion, a path to profitability alone does not establish a rationale for governmental involvement in the project, which should instead be based on the potential to produce public benefits. This is also consistent with a public investment approach proposed by the Government Accountability Office report, entitled, "Freight Transportation: Short Sea Shipping Option Shows Importance of Systematic Approach to Public Investment Decisions (July 2005)" (GAO–05–768, July 2005). However, to better clarify this methodology, both the information required in project applications and the weight-based criteria were reorganized in the final rule. Additionally, in recognition that confidential business information may be required to adequately describe the finance plan, a section was added to protect confidential business information.

Two commenters believe that the Marine Highway Program needs strong support throughout DOT's leadership and inquired about the process and means by which Marine Highway Project applications will be evaluated, designated and supported by the Federal government. An inter-agency review team, consisting of both the Department of Transportation and non-Department of Transportation representation will be established for this purpose. Section 393.4(e)(6) titled "Evaluation Process" was inserted into the final rule to address this.

Nine comments were received that recommended the Department of

Transportation establish standard measures to quantify benefits of proposed Marine Highway Projects. Suggestions included specifying the use of "ton-miles" and including a formula to convert to/from twenty-foot equivalent unit (TEU) and forty-foot equivalent unit (FEU) using standard weights. Commenters recommended including standards for diesel emissions, fuel savings, and standards to quantify savings in highway maintenance and bridge maintenance, as well as safety benefits on a per-mile basis. The Department of Transportation believes that development and use of uniform measures, to the extent practicable, would benefit applicants, improve objective review of applications and set the stage for consistent performance measures for projects that receive designation by the Secretary. The Department of Transportation concurs that standards of measure and some basic baseline measures would be beneficial, but applicants should be encouraged to use more accurate or localized data and measures, when available. Section 393.4(e)(3) was added in the final rule, addressing this issue, but the actual standards and measures will be posted on the Maritime Administration's Web site to enable refinement and updating over time.

One commenter noted that, after initial designation, a corridor could expand beyond the original scope in the designation. While the Department of Transportation intends that the Marine Highway Corridors be broadly defined and inclusive of all related ports, both large and small, it is recognized that specific projects could (and hopefully will) find expansion opportunities after designation by the Secretary of Transportation. To address this possibility, Section 393.4(e)(5) was amended to establish a process by which this can be achieved.

Section 393.5 Incentives, Impediments and Solutions

A total of 60 comments were received that either recommended incentives, or identified and recommended solutions for impediments to increased use of America's Marine Highway. Many of these comments could be interpreted as proposing an incentive or addressing specific impediments. Commenters proposed incentives including tax credits, reduced emissions incentives, accelerated depreciation and other mechanisms for shippers, service providers, shipyards and other stakeholders. Other comments recommended subsidies to reduce start-up risk, use of Congestion Mitigation and Air Quality (CMAQ) funding, and other vehicles to stimulate new services and vessel construction. While no changes to the rule were warranted by these comments, the Department of Transportation appreciates the thoughtful suggestions and will take them into consideration in meeting the Energy Act's requirement to develop and propose short-term incentives that would encourage the use of the Marine Highway.

Comments that identified or recommended solutions to impediments to increased use of the Marine Highway had several areas of focus. The greatest number of comments (13) identified the Harbor Maintenance Tax (HMT) as an impediment and recommended waiving HMT for domestic waterborne shipments. One commenter noted that with 18 Federal departments and agencies playing a role in marine transportation policy and operations, the lack of a comprehensive regulatory structure in general represents an impediment to marine highway growth. The 24-hour advance notice requirement for U.S.-Canada services was also identified as an impediment, as the duration of most of these voyages is well under 24 hours. Other comments proposed funding mechanisms for infrastructure, weight handling equipment and port-connectors, increased dredging in the Great Lakes, short-term or temporary modifications to the Jones Act, streamlining or modification of the Title XI loan guarantee program, and changes to worker compensation policy, among other items. No statutory authority currently exists to implement these recommendations. Therefore, no changes to the rule were warranted by these comments, however, the Department of Transportation appreciates this input and will provide these comments to the advisory board that the Energy Act calls for to examine these issues.

One commenter indicated that the program needs to be incorporated into the policies and programs of several Federal departments to address various impediments to marine highway expansion. The Department of Transportation intends to include several key governmental agencies on the advisory board to address these issues, but no change to the rule is needed to achieve this outcome.

Section 393.6 Research on Marine Highway Transportation

The Department received one comment specific to section 393.6. The commenter recommended that the Department of Transportation direct funding for the Maritime Administration to sponsor Marine Highway Research and Development centers that would be provided through Surface Transportation Reauthorization, and be primarily aimed at vessel design (including dual-use DOD/commercial capabilities) and interfacing port/terminal design with emerging vessel characteristics. This comment is beyond the scope of the rulemaking and does not impact the final rule.

Program Description

In this rulemaking, the Department of Transportation adopts as final, with some minor and clarifying changes, the America's Marine Highway Program established by the October 9, 2008, Interim Final Rule. This rulemaking also sets forth more specific procedures for recommendations for designation of Marine Highway Corridors, and separate procedures for applications for Marine Highway Projects.

Rulemaking Analyses and Notices

Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures

This rulemaking is not significant under section 3(f) of Executive Order 12866, and as a consequence, the Office of Management and Budget (OMB) did not review the rule. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department (44 FR 11034; February 26, 1979). It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. Designation of Marine Highway Corridors and Marine Highway Projects does not have an immediate economic impact. Following designation, individual Corridor and Project components that may have an economic impact will be determined as they are identified.

Executive Order 13132

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations herein have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. No State, local government or Tribal government raised concerns about federalism in comments regarding the interim final rule. Therefore, we did not consult with State and local officials on

this procedural rule. However, we will act as partners with States and local officials in transportation planning and supporting individual projects under this program.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires us to assess the impact that regulations will have on small entities. After analysis of this final rule, the Department of Transportation certifies that this rule will not have a significant economic impact on a substantial number of small entities, because this rule merely sets forth procedures.

Environmental Impact Analysis

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and we have concluded that designation of Marine Highway Corridors does not have an immediate environmental impact. Designation of Marine Highway Corridors will only identify existing landside corridors that could, in the future, accommodate and benefit from expanded marine transportation. The location, scope and nature of any new or expanded services is not yet known. The promulgation of these procedural rules does not therefore significantly affect the environment. In addition, the extent of any Federal action, including funding (if any) is not yet known. NEPA analysis will be conducted when: (1) There is a concrete determination of what role the Federal government might play in encouraging such services, (2) the geographic footprint of the program is determined and; (3) potential Marine Highway projects are proposed. Until this information is available, a NEPA analysis would not present a credible forward look and would therefore not be a useful tool for basic program planning. NEPA analysis will be commenced as soon as sufficient information is available.

Paperwork Reduction Act

This regulation establishes new requirements for designation of a Marine Highway Project and republishes the requirements in MARAD–2008–0096 for designation of a Marine Highway Corridor. Persons seeking designation of a Corridor or Project (if within a designated Marine Highway Corridor) under America's Marine Highway Program are required to submit a written application via U.S. Mail or electronically via *http://www.regulations.gov* (MARAD–2010–0022). Measurements and standards (criteria) for designation of a Marine Highway Project will be published on the Maritime Administration's Web site (*http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhp_trans_planning/mhp_trans_planning.htm*). The format will also be provided.

The information collected will be used to review recommendations for designation as a Marine Highway Corridor or Project and evaluate applications for designation as "America's Marine Highway Corridor" or "America's Marine Highway Project." (The Department of Transportation will keep business information confidential if marked accordingly.) Designated projects will also be published on the Maritime Administration's Web site (*http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhp_project_recommendations/mhp_project_recommendations.htm*).

The Office of Management and Budget (OMB) will be requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Sec. 3501, *et seq.*).

Unfunded Mandates Reform Act

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves this objective of U.S. policy. Department guidance requires the use of a revised threshold figure of $141.3 million, which is the value of $100 million in 1995 after adjusting for inflation.

Consultation and Coordination With Indian Tribal Governments

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments, dated November 6, 2000, seeks to establish regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications, to strengthen the United States government-to-government relationships with Indian Tribal Governments, and to reduce the imposition of unfunded mandates upon Indian Tribes. At this time we believe that designation of Marine Highway Corridors and Marine Highway Projects does not have an impact on Indian Tribal Governments. Following designation, individual Corridor and Project components that may have an impact on Indian Tribes will be determined as they are identified. The Department of Transportation will consult with those Indian Tribal Governments that may be affected by these designations on factors pertaining to program implementation.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Privacy Act

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

List of Subjects in 46 CFR Part 393

Marine Highway, Short sea transportation, Vessels.

■ Accordingly, the Department of Transportation amends 46 CFR Chapter II by revising part 393 to read as follows:

PART 393—AMERICA'S MARINE HIGHWAY PROGRAM

Sec.
393.1 Purpose.
393.2 Definitions.
393.3 Marine Highway Corridors.
393.4 Marine Highway Projects.
393.5 Incentives, Impediments and Solutions.
393.6 Research on Marine Highway Transportation.

Authority: Energy Independence and Security Act of 2007, Sections 1121, 1122, and 1123 of Public Law 110–140, enacted into law on December 19, 2007 (121 Stat. 1492).

§ 393.1 Purpose.

(a) This part prescribes final regulations establishing a short sea transportation program as set forth in Sections 1121, 1122, and 1123 of the Energy Independence and Security Act of 2007, enacted into law on December 19, 2007.

(b) The purpose of America's Marine Highway Program is described in Section 1121. Section 1121 states that "[t]he Secretary shall designate short sea transportation routes as extensions of

the surface transportation system to focus public and private efforts to use the waterways to relieve landside congestion along coastal corridors." America's Marine Highway Program consists of four primary components:

(1) Marine Highway Corridor Designations. This regulation establishes the goals and methods by which specific Marine Highway Corridors (including Connectors and Crossings) will be identified and designated by the Secretary of Transportation. The purpose of designating Marine Highway Corridors is to integrate America's Marine Highway into the surface transportation system. The Marine Highway Corridors will serve as extensions of the surface transportation system. They are commercial coastal, inland, and intracoastal waters of the United States, described in terms of the specific landside transportation routes (road or rail line) that they supplement. They support the movement of passengers and cargo along these specified routes and mitigate the effects of landside congestion, such as increased emissions and energy inefficiencies. In addition to corridors, the Secretary may designate Marine Highway "Connectors" and "Crossings" as described in paragraphs (h)(1) and (h)(2) of § 393.2. Through America's Marine Highway Program, the Department will encourage the development of multi-jurisdictional coalitions and focus public and private efforts and investment on shifting freight and passengers from at- or near capacity landside routes to more effectively utilize Marine Highway Corridors.

(2) Marine Highway Project Designations. This regulation establishes the goals and methods by which specific Marine Highway Projects will be identified and designated by the Secretary of Transportation. The purpose is to designate projects that, if successfully implemented, expanded, or otherwise enhanced, would reduce external costs and provide the greatest benefit to the public. Closely linked to congestion relief, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, reduced costs associated with landside transportation infrastructure maintenance savings, improved safety and transportation system resiliency and redundancy. Additional consideration will be given to Marine Highway Projects that represent the most cost-effective option among other modal improvements. Designated Marine Highway Projects may receive direct support from the Department as described in this section.

(3) Incentives, Impediments and Solutions. This section outlines how the Department, in partnership with public and private entities, will identify potential incentives, seek solutions to impediments to encourage utilization of America's Marine Highway and incorporate it, including ferries, in State, regional, local, and Tribal government transportation planning.

(4) Research. This section describes the research that the Department, working with the Environmental Protection Agency, will conduct to support America's Marine Highway, within the limitations of available resources, and to encourage multi-State planning. Research would include environmental and transportation impacts (benefits and costs), technology, vessel design, and solutions to impediments to the Marine Highway.

(c) In addition, vessels engaged in Marine Highway operations may apply for Capital Construction Fund (CCF) benefits. This program was created to assist owners and operators of U.S.-flag vessels in accumulating the capital necessary for the modernization and expansion of the U.S. merchant marine by encouraging construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money placed into a CCF.

§ 393.2 Definitions.

For the purposes of this part:

(a) *Administrator.* The Maritime Administrator, Maritime Administration, U.S. DOT, who has been authorized by the Secretary of Transportation to administer America's Marine Highway Program.

(b) *Applicant.* An entity that applies for designation of a Marine Highway Corridor or Project under this regulation.

(c) *Coastwise Shipping Laws.* Laws, including the Jones Act, as set forth in Chapter 551 of Title 46, United States Code.

(d) *Corridor Sponsor.* An entity that recommends a Corridor (including a Connector or Crossing, as described below) for designation as a Marine Highway Corridor. Corridor sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including Departments of Transportation), port authorities and Tribal governments, who may submit recommendations for designation as a Marine Highway Corridor.

(e) *Department.* The U.S. Department of Transportation (DOT).

(f) *Domestic Trade.* Trade between points in the United States.

(g) *Lift-on/Lift-off (LO/LO) Vessel.* A vessel of which the loading and discharging operations are carried out by cranes and derricks.

(h) *Marine Highway Corridor.* A water transportation route that serves as an extension of the surface transportation system that can help mitigate congestion-related impacts along a specified land transportation route. It is identified and described in terms of the land transportation route that it supplements, and must, by transporting freight or passengers, provide measurable benefits to the surface transportation route in the form of traffic reductions, reduced emissions, energy savings, improved safety, system resiliency, and/or reduced infrastructure costs. Routes that cannot relieve landside congestion (*i.e.*; those to/from islands) are not eligible for designation under this program. In addition to "Corridors," prospective sponsors can recommend Marine Highway "Connectors" and "Crossings" for designation as described in paragraphs (h)(1) and (h)(2) of this section:

(1) Marine Highway Connectors are routes that will provide substantial linkages to or between the larger corridors, and serve, in conjunction with a corridor, to move freight and/or passengers into, out of or within a region.

(2) Marine Highway Crossings are routes that provide relief to congested border crossings, bridges, and tunnels or offer a shorter route than the landside alternative. Although they may not parallel a corridor or connector, crossings may provide relief to a corridor or connector, or to local or regional passenger and freight transportation systems. Crossings may include cross-harbor and inter-terminal passenger and/or freight services.

(i) *Marine Highway Project.* A new Marine Highway service, or expansion of an existing service, that receives support from the Department and provides public benefit by transporting passengers and/or freight (container or wheeled) in support of all or a portion of a Marine Highway Corridor, Connector or Crossing. Projects are proposed by a project sponsor and designated by the Secretary under this program.

(j) *Marine Highway (or Short Sea Transportation):* The carriage by vessel of passengers and/or cargo (intermodal containers, trailers, car floats, rail ferries and other cargoes loaded by wheeled technology) that is loaded at a port in the United States and unloaded either at another port in the United States, or that

is loaded at a port in the United States and unloaded at a port in Canada located in the Great Lakes-Saint Lawrence Seaway System, or loaded at a port in Canada located in the Great Lakes-Saint Lawrence Seaway System and unloaded at a port in the United States. For the purposes of this specific program, routes and services that do not offer potential relief to a landside transportation route (*i.e.*; to/from islands) do not fall within this definition.

(k) *Project sponsor.* Project sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including State Departments of Transportation), port authorities and Tribal governments, who may submit applications for designation as a Marine Highway Project.

(l) *Roll-on/Roll-off (RO/RO) Vessel.* Any vessel that has ramps allowing cargo to be loaded and discharged by means of wheeled vehicles so that cranes are not required. This includes, but is not limited to trailers, car floats and ferries, including rail ferries.

(m) *Secretary.* The Secretary of Transportation.

(n) *United States Documented Vessel.* A vessel documented under 46 U.S.C. Chapter 121.

§ 393.3 Marine Highway Corridors.

(a) *Summary.* The purpose of this section is to designate specific routes as Marine Highway Corridors (including Connectors and Crossings). Corridors will be designated by the Secretary. The goal of this designation process is to accelerate the development of multi-State and multi-jurisdictional Marine Highway Corridors to relieve landside congestion. Designation will encourage public/private partnerships, and help focus investment on those Marine Highway Corridors that offer the maximum potential public benefit in congestion-related emissions reduction, energy efficiency, safety and other areas. Corridors already designated as "Corridors of the Future" under DOT's National Strategy to Reduce Congestion that have commercial waterways that parallel or can otherwise benefit them will be fast-tracked for designation as Marine Highway Corridors.

(b) *Objectives.* The primary objectives of the designation of Marine Highway Corridors are to:

(1) Establish Marine Highway Corridors as "extensions of the surface transportation system" as provided by Section 1121 of the Energy Independence and Security Act of 2007.

(2) Develop multi-jurisdictional coalitions that focus public and private efforts to use the waterways to relieve congestion-related impacts along land transportation routes for freight and passengers.

(3) Obtain public benefit by shifting freight and passengers in measurable terms from land transportation routes to Marine Highway Corridors. In addition, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings, improved safety, and added system resiliency. Additional consideration will be given to Marine Highway Projects that represent the most cost-effective option among other modal improvements and projects that reduce border delays.

(4) Identify potential savings that could be realized by providing an alternative to land transportation infrastructure construction and maintenance.

(c) *Designation of Marine Highway Corridors.* The Department will continue to accept Marine Highway Corridor recommendations from prospective Corridor sponsors. Corridor sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including State Departments of Transportation), port authorities and Tribal governments. In addition to "Corridors," prospective sponsors may recommend Marine Highway "Connectors" and "Crossings" for designation by the Secretary (*see* definitions). The Secretary will make Marine Highway Corridor designations. In certain cases the Secretary of Transportation may designate a Marine Highway Corridor, Connector or Crossing without receipt of a recommendation. The Department will publish all Marine Highway Corridors that receive designation by the Secretary on the Maritime Administration's Web site. Interested parties are encouraged to visit *http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhi_home.htm* for the current list of Designated Corridors. When responding to specific solicitations for Marine Highway Corridors, Connectors and Crossings by the Secretary of Transportation, the sponsors should provide the following information in the recommendation:

(1) *Physical Description of Proposed Marine Highway Corridor.* Describe the proposed Marine Highway Corridor (including Connector or Crossing), and its connection to existing or planned transportation infrastructure and intermodal facilities. Include key navigational factors such as available draft, channel width, bridge or lock clearance and identify if they could limit service.

(2) *Surface Transportation Corridor Served.* Provide a summary of the land transportation route that the Marine Highway would benefit. Include a description of the route, its primary users, the nature, locations and occurrence of travel delays, urban areas affected, and other geographic or jurisdictional issues that impact its overall operation and performance.

(3) *Involved Parties.* Provide the organizational structure of the parties recommending the Corridor designation including business affiliations, and private sector stakeholders. Multi-jurisdictional coalitions may include State Departments of Transportation, Metropolitan Planning Organizations, municipalities and other governmental entities (including Tribal) that have been engaged. Include the extent to which they support the corridor designation. Provide any affiliations with environmental groups or civic associations.

(4) *Passengers and Freight.* Identify the number of likely passengers and/or quantity of freight that are candidates for shifting to water transportation on the proposed Marine Highway Corridor. If known, include specific shippers, manufacturers, distributors or other entities that could benefit from a Marine Highway alternative, and the extent to which these entities have been engaged.

(5) *Congestion Reduction.* Describe the extent to which the proposed Corridor could relieve landside congestion in measurable terms. Include any known offsetting land transportation infrastructure savings (either construction or maintenance) that would result from the project.

(6) *Public benefits.* Provide, if known, the savings over status quo in emissions, including greenhouse gases, energy consumption, landside infrastructure maintenance costs, safety and system resiliency. Specify if the Marine Highway Corridor represents the most cost-effective option among other modal improvements. Include consideration of the implications future growth may have on the proposal.

(7) *Impediments.* Describe known or anticipated obstacles to shifting capacity to the proposed Marine Highway Corridor. Include any strategies, either in place or proposed, to deal with the impediments.

(d) *Scope of Department Support.* Marine Highway Corridors, Connectors and Crossings that receive designation will be posted on a Web site maintained by the Maritime Administration. The Department of Transportation will coordinate with Corridor sponsors to

identify the most appropriate actions to support the Corridors. Support could include any of the following, as appropriate and within agency resources:

(1) Promote the Corridor with appropriate governmental, State, local and Tribal government transportation planners, private sector entities or other decision-makers.

(2) Coordinate with ports, State Departments of Transportation, Metropolitan Planning Organizations, localities, other public agencies (including Tribal governments) and the private sector to support the designated corridor. Efforts can be aimed at obtaining access to land or terminals, developing landside facilities and infrastructure, and working with Federal, regional, State, local, and Tribal governmental entities to remove barriers to self-supporting operations.

(3) Pursue memorandums of agreement with other Federal entities to transport Federally owned or generated cargo using waterborne transportation along the Marine Highway Corridor, when practical or available.

(4) Assist with collection and dissemination of data for the designation and delineation of Marine Highway Corridors as available resources permit.

(5) Work with Federal entities and regional, State, local and Tribal governments to include designated Corridors in transportation planning.

(6) Bring specific impediments to the attention of the advisory board chartered to address such barriers.

(7) Conduct research on issues specific to designated Corridors as available resources permit.

(8) Utilize current or future Federal funding mechanisms, as appropriate, to support the Corridor.

(9) Communicate with designated Corridor coalitions to provide ongoing support and identify lessons learned and best practices for the overall Marine Highway program.

§ 393.4 Marine Highway Projects.

(a) *Summary.* The purpose of this section is to designate projects that, if successfully implemented, expanded, or otherwise enhanced, would reduce external costs and provide the greatest benefit to the public. In addition to congestion relief, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings, and improved safety. The Department will give additional consideration to Marine Highway Projects that represent the most cost-effective option among other modal improvements or reduce border crossing delays. Some Marine Highway Projects can also provide public benefit by offering routes that are more resilient to natural or human incidents that interrupt surface transportation, or provide additional, redundant surface transportation options. Designation can help focus public and private investment on pre-identified projects that offer the maximum potential public benefit. Designated Marine Highway Projects may receive support from the Department as described in this section.

(b) *Objectives.* The primary objectives of the designation of Marine Highway Projects are to:

(1) Reduce landside congestion-related impacts.

(2) Identify proposed water transportation services that represent the greatest public benefit as measured in reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings and improved safety.

(3) Identify potential savings with water transportation projects that represent the most cost-effective option among other modal improvements or reduce border crossing delays.

(4) Improve surface transportation system resiliency and provide additional options.

(5) Focus resources on those projects that offer the greatest likelihood of successful operation.

(6) Develop best practices for the Marine Highway Program.

(7) Provide specific examples, with performance measures and quantifiable outcomes, of successful Marine Highway Projects for demonstration of the benefits of water transportation.

(c) *Designation of Marine Highway Projects.* The Department will solicit applications for designation as specific Marine Highway Projects. Applications will be accepted from a Project sponsor. Project sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including State Departments of Transportation), port authorities and Tribal governments. Project sponsors are encouraged to develop coalitions and public/private partnerships with the common objective of developing the specific Marine Highway Project. Potential partners can include vessel owners and operators, third party logistics providers, trucking companies, shippers, railroads, port authorities, State, regional, local and Tribal government transportation planners, environmental interests or any combination of entities working in collaboration under a single application. Candidate Projects can start a new operation or be an existing Marine Highway operation where expansion or improvements present maximum public benefit. Applications must meet the requirements of coastwise shipping laws and all applicable Federal, State and local laws.

(d) *Action by the Department of Transportation.* The Department will evaluate and select Projects based on an analysis and technical review of the information provided by the applicant. The Department will also evaluate projects based on the results of an environmental analysis. Projects that support a designated Marine Highway Corridor (or Connector or Crossing), receive a favorable technical review, and meet other criteria as defined in 46 CFR 393.4(e), may be nominated by the Maritime Administrator for selection by the Secretary. Upon designation as a Marine Highway Project, the Department will coordinate with the Project sponsor to identify the most appropriate Departmental actions to support the project. Department support could include any of the following, as appropriate and within agency resources:

(1) Promote the service with appropriate governmental, regional, State, local or Tribal government transportation planners, private sector entities or other decision makers.

(2) Coordinate with ports, State Departments of Transportation, Metropolitan Planning Organizations, localities, other public agencies and the private sector to support the designated service. Efforts can be aimed at identifying resources, obtaining access to land or terminals, developing landside facilities and infrastructure, and working with Federal, regional, State, local or Tribal governmental entities to remove barriers to success.

(3) Pursue memorandums of agreement with other Federal entities to transport Federally owned or generated cargo using the services of the designated project, when practical or available.

(4) In cases where transportation infrastructure is needed, Project sponsors may request to be included on the Secretary of Transportation's list of high-priority transportation infrastructure projects under Executive Order 13274, "Environmental Stewardship and Transportation Infrastructure Project Review." For these projects, Executive Order 13274 provides that Federal agencies shall, to the maximum extent practicable, expedite their reviews for relevant permits or other approvals and take related actions as necessary, consistent

with available resources and applicable laws.

(5) Assist with developing individual performance measures for Marine Highway Projects.

(6) Work with Federal entities and regional, State, local and Tribal governments to include designated Projects in transportation planning.

(7) Bring specific impediments to the attention of the advisory board chartered to address these barriers.

(8) Conduct research on issues specific to Marine Highway Projects.

(9) Utilize current or future Federal funding mechanisms, as appropriate, to support the Projects.

(10) Maintain liaison with sponsors and representatives of designated Projects to provide ongoing support and identify lessons learned and best practices for other projects and the overall Marine Highway program.

(e) *Application for Designation as a Marine Highway Project.* This section specifies the criteria that the Department will use to evaluate Marine Highway Project applications. Applicants should provide the following:

(1) *Applications for Proposed Projects.* When responding to specific solicitations for Marine Highway Projects by the Department, describe the overall operation of the proposed project, including which ports and terminals will be served, number and type of vessels, size, quantity and type of cargo and/or passengers, routes, frequency, and other relevant information. Applicants should also include the following information in their project applications:

(i) *Marine Highway Corridor(s).* Identify which, if known, designated Marine Highway Corridors, Connectors or Crossings will be utilized.

(ii) *Organization.* Provide the organizational structure of the proposed project, including business affiliations, environmental, non-profit organizations and governmental or private sector stakeholders.

(iii) *Partnerships.*

(A) *Private Sector participation.* Identify private sector partners and describe their levels of commitment. Private sector partners can include terminals, vessel operators, shipyards, shippers, trucking companies, railroads, third party logistics providers, shipping lines, labor, workforce and other entities deemed appropriate by the Secretary.

(B) *Public Sector partners:* Identify State Departments of Transportation, Metropolitan Planning Organizations, municipalities and other governmental entities (including Tribal) that have been engaged and the extent to which they support the service. Include any affiliations with environmental groups or civic associations.

(C) *Documentation.* Provide documents affirming commitment or support from entities involved in the project.

(iv) *External cost savings and public benefit.*

(A) *Potential relief to surface transportation travel delays.* Describe the extent to which the proposed project will relieve landside congestion in measurable terms now and in the future, such as reductions in vehicle miles traveled. Include the landside routes that stand to benefit from the water transportation operation.

(B) *Emissions benefits.* Address the savings, in quantifiable terms, now and in the future over the current practice in emissions, including greenhouse gas emissions, criteria air pollutants or other environmental benefits the project offers.

(C) *Energy savings.* Provide an analysis of potential reductions in energy consumption, in quantifiable terms, now and in the future over the current practice.

(D) *Landside transportation infrastructure maintenance savings.* To the extent the data is available, indicate, in dollars per year, the projected savings of public funds that would result from a proposed project in road or railroad maintenance or repair, including pavement, bridges, tunnels or related transportation infrastructure. Include the impacts of accelerated infrastructure deterioration caused by vehicles currently using the route, especially in cases of oversize or overweight vehicles.

(E) *Safety improvements.* Describe, in measurable terms, the projected safety improvements that would result from the proposed operation.

(F) *System resiliency and redundancy.* To the extent data is available describe, if applicable, how a proposed Marine Highway Project offers a resilient route or service that can benefit the public. Where land transportation routes serving a locale or region are limited, describe how a proposed project offers an alternative and the benefit this could offer when other routes are interrupted as a result of natural or man-made incidents.

(v) *Capacity Alternatives.* In cases where a Marine Highway Project is proposed as an alternative to constructing new land transportation capacity, indicate, in quantifiable terms, whether the proposed project represents the most cost-beneficial option among other modal improvements. Include in the comparison an analysis of the full range of benefits expected from the project. Include the projected savings in life-cycle costs of publicly maintained infrastructure.

(vi) *Business Planning.* Indicate the degree to which the proposed project is associated with a service that is self-supporting:

(A) *Financial plan.* Provide the project's financial plan and provide projected revenues and expenses. Include labor and operating costs, drayage, fixed and recurring infrastructure and maintenance costs, vessel or equipment acquisition or construction costs, *etc.* Include any anticipated changes in local or regional freight or passenger transportation, policy or regulations, ports, industry, corridors, or other developments affecting the project.

(B) *Demand for services.* Identify shippers that have indicated an interest in and level of commitment to the proposed service, or describe the specific commodities, market, and shippers the service will attract, and the extent to which these entities have been engaged. In the case of services involving passengers, provide indicators of demand for the service, anticipated volumes and other factors that indicate likely utilization of the service. Include a marketing strategy, if one is in place.

(C) *Analysis.* Provide, (or reference, if publicly available) market or transportation system research, data, and analysis used to develop or support the business model.

(vii) *Proposed Project Timeline.* Include a proposed project timeline with estimated start dates and key milestones. Include the point in the timeline at which the enterprise is anticipated to attain self-sufficiency (if applicable).

(viii) *Support.* Describe any known or anticipated obstacles to either implementation or long-term success of the project. Include any strategies, either in place or proposed, to mitigate impediments. In the event that public sector financial support is being sought, describe the amount, form and duration of public investment required.

(ix) *Environmental Considerations.* Applicants must provide all information on hand that would assist the Department in conducting environmental analysis of the proposed project under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*)

(2) *Cost and Benefits.* The Department believes that benefit-cost analysis (BCA), including the monetization and discounting of costs and benefits to a common unit of measurement in present-day dollars, is important. The systematic process of comparing

expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between alternative transportation investments. However, we also recognize that development of a thorough BCA can be prohibitively costly to applicants, especially in cases where Federal funding is not currently available. Applicants should provide a BCA, if one is available. At a minimum, applicants should provide estimates of the project's expected benefits in external cost savings and public benefit and costs of capacity alternatives [sections 393.4(e)(1)(iv) and 393.4(e)(1)(v)].

(3) *Standards and Measures.* The Department will post, on the Maritime Administration's Web site, (*http://www.marad.dot.gov*) proposed standards (*i.e.:* the definition and use of ton-miles, measures of landside congestion, *etc.*) and measures that, lacking more specific or technically supported applicant-provided data, will be used by the Department to evaluate applications. Some examples of measures are the use of a standard cargo tonnage per container, fuel consumption rates, vehicle emissions and safety data for various transportation options, and baseline maintenance, repair and construction costs for surface transportation infrastructure. While we recognize that these standards and measures may not be ideal, the intent is to establish a minimal baseline by which to evaluate external costs and public benefits of transportation options. In the event applicants provide more specific and supported measures, they will be used in evaluating the potential benefits and costs of a project.

(4) *Protection of Confidential Business Information.* All information submitted as part of or in support of an application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If your application includes information that you consider to be trade secret or confidential commercial or financial information, please do the following:

(i) Note on the front cover that the submission "Contains Confidential Business Information (CBI);"

(ii) Mark each affected page "CBI;" and

(iii) Clearly highlight or otherwise denote the CBI portions. The Department protects such information from disclosure to the extent allowed under applicable law. In the event the Department receives a Freedom of Information Act (FOIA) request for the information, the Department will follow the procedures described in its FOIA regulations at 49 CFR § 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

(5) *Contents of Application.* When responding to specific solicitations for Marine Highway Projects by the Department, applicants should include all of the information requested by Section 393.4(e)(1) and (2) above organized in a manner consistent with the elements set forth in that section. The Department reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. The narrative portion of an application should not exceed 20 pages in length. The narrative should address all relevant information contained in paragraphs (e)(1)(i) through (ix) of § 393.4. Documentation supporting the assertions made in the narrative portion may also be provided in the form of appendices, but limited to relevant information. Applications may be submitted electronically via the **Federal Register** (*http://www.regulations.gov*). Applications submitted in writing must include the original and three copies and must be on 8.5″ x 11″ single spaced paper, excluding maps, Geographic Information Systems (GIS) representations, *etc.* In the event that the sponsor of a Marine Highway Project that has already been designated by the Secretary seeks a modification to the designation because of a change in project scope, an expansion of the project, or other significant change to the project, the project sponsor should request the change in writing to the Secretary via the Administrator of the Maritime Administration. The request should contain any changed or new information that is relevant to the project.

(6) *Evaluation Process.* Upon receipt by the Maritime Administrator, the application will be evaluated using the criteria outlined above during a technical review and an environmental analysis. The review will assess factors such as project scope, impact, public benefit, environmental effect, offsetting costs, cost to the Government (if any), the likelihood of long-term self-supporting operations, and its relationship with Marine Highway Corridors once designated (*See* section 393.3 Marine Highway Corridors). Additional factors may be considered during the evaluation process. Upon completion of the technical review, applications will be forwarded to an inter-agency review team as described below. The Department will establish an inter-agency team to review each application received during the solicitation period (solicitation periods will be established via a future **Federal Register** Notice). The evaluation team will be led by the Office of the Secretary and will include members of the Maritime Administration, other Department of Transportation Operating Administrations, and as appropriate, representation from other Federal agencies and other representatives, as needed. The inter-agency team will evaluate applications using criteria that establishes the degree to which a proposed project can; reduce external cost and provide public benefit; offer a lower-cost alternative to increasing capacity in the Corridor, and; demonstrate the likelihood the service associated with the project will become self-supporting in a specified and reasonable timeframe. The Department will assign ratings of "highly recommended," "recommended," or "not recommended" for each application based on the criteria set forth in section 393.4(e)(1) and (2) of this rule. Specific numerical scores will not be assigned. Within the overall criteria of External Cost Savings and Public Benefit, elements paragraphs (e)(1)(iv)(A) through (e)(1)(iv)(D) of this section will receive greater weight than will paragraphs (e)(1)(iv)(E) and (e)(1)(iv)(F) of this section. For the Business Planning elements, only paragraphs (e)(1)(vi)(A) and (e)(1)(vi)(B) of this section will be weighted; paragraph (e)(1)(vi)(C) of this section will be reviewed to assess the degree to which future projections such as operating costs and freight/passenger demand are accurate and reliable. Projects that have been deemed "highly recommended" and "recommended" will be placed on a preliminary list of projects for designation. The Secretary will make final designations in a manner that provides a balance between geographic regions and business models (*i.e.* among freight and passenger, expansion and new service, and existing vessel/terminal and new construction) to the degree this can be achieved. Prospective project sponsors will be notified as to the status of their application in writing once a determination has been made.

(7) *Performance Monitoring.* (i) Once designated projects enter the operational phase (either start of a new service, or expansion of existing service), the Department will evaluate them regularly to determine if the project's objectives are being achieved.

(ii) Overall project performance will be in one of three categories—exceeds, meets, or does not meet original projections in each of the three areas defined below:

Public benefit. Does the project meet the stated goals in shifting specific numbers of vehicles (number of trucks, rail cars or automobiles) off the designated landside routes? Other public benefits, including energy savings, reduced emissions, and safety improvements will be assumed to be a direct derivative of either numbers of vehicles shifted, or vehicle/ton miles avoided, unless specific factors change (such as a change in vessel fuel or emissions).

Public cost. Is the overall cost to the Federal government (if any) on track with estimates at the time of designation? The overall cost to the Federal government represents the amount of Federal investment (*i.e.* direct funding, loan guarantees or similar mechanisms) reduced by the offsetting savings the project represents (road/bridge wear and tear avoided, infrastructure construction or expansion deferred).

Timeliness factor. Is the project on track for the point at which the enterprise is projected to attain self-sufficiency? For example, if the project was anticipated to attain self-sufficiency after 36 months of operation, is it on track at the point of evaluation to meet that objective? This can be determined by assessing revenues, freight and passenger trends, expenses and other factors established in the application review process.

§ 393.5. Incentives, Impediments and Solutions.

(a) *Summary.* The purpose of this section is to identify short term incentives and solutions to impediments in order to encourage use of the Marine Highway for freight and passengers.

(b) *Objectives.* This section is aimed at increasing the use of the Marine Highways through the following primary objectives:

(1) Encourage the integration of Marine Highways in transportation plans at the State, regional, local and Tribal levels.

(2) Develop short term incentives aimed at expanding existing or starting new Marine Highway operations.

(3) Identify and seek solutions to impediments to the Marine Highway.

(c) *Federal, State, Local, Regional and Tribal Transportation Planning.* The Department will coordinate with Federal, State, local and Tribal governments and Metropolitan Planning Organizations to develop strategies to encourage the use of America's Marine Highways for transportation of passengers and cargo. The Department will:

(1) Work with these entities to assess plans and develop strategies, where appropriate, to incorporate Marine Highway transportation, including ferries, and other marine transportation solutions for regional and interstate transport of freight and passengers in their statewide and metropolitan transportation plans.

(2) Facilitate groups of States and multi-State transportation entities to determine how Marine Highway transportation can address traffic delays, bottlenecks, and other interstate transportation challenges to their mutual benefit.

(3) Identify other Federal agencies that have jurisdiction over the project, or which currently provide funding for components of the project, in order to determine the extent to which those agencies should be consulted with and invited to assist in the coordination process.

(4) Consult with Federal Highway Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, Federal Transit Administration and other entities within DOT, as appropriate, for support and to evaluate costs and benefits of proposed Marine Highway Corridors and Projects.

(d) *Short-Term Incentives.* The Department will develop proposed short-term incentives to encourage the use, initiation, or expansion of Marine Highway services in consultation with shippers and other participants in transportation logistics, and government entities, as appropriate.

(e) *Impediments and Solutions.* The Department will either establish a board, or modify an existing body, in accordance with the Federal Advisory Committee Act (FACA), whose role is to identify impediments that hinder effective use of the Marine Highways and recommend solutions. The Board will meet regularly and report its findings and recommended solutions to the Maritime Administrator. Board membership will include, among others, representation by Federal Departments and Agencies, State Departments of Transportation, Metropolitan Planning Organizations and other local public entities including Tribal governments and private sector stakeholders. The Department will take actions, as appropriate, to address impediments to the Marine Highways.

§ 393.6. Research on Marine Highway Transportation.

(a) *Summary.* The Department will work in consultation with the Environmental Protection Agency and other entities as appropriate, within the limits of available resources, to conduct research in support of America's Marine Highway or in direct support of designated Marine Highway Corridors and Projects.

(b) *Objectives.* The primary objectives of selected research Projects are to:

(1) Identify and quantify environmental and transportation-related benefits that can be derived from utilization of the Marine Highways as compared to other modes of surface transportation.

(2) Identify existing or emerging technology, vessel design, and other improvements that would reduce emissions, increase fuel economy, and lower costs of Marine Highway transportation and increase the efficiency of intermodal transfers.

Dated: April 1, 2010.

By Order of the Administrator.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–7899 Filed 4–7–10; 11:15 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2009–0010; MO 92210–0–0009–B4]

RIN 1018–AV87

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Oregon Chub (Oregonichthys crameri); Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a final rule to designate critical habitat for the Oregon chub (*Oregonichthys crameri*) under the Endangered Species Act of 1973, as amended (Act), on March 10, 2010. We are publishing several corrections to that final rule in this document.

DATES: This rule is effective April 9, 2010.

ADDRESSES: Our final rule and associated documentation are available at *http://regulations.gov* at Docket No. FWS–R1–ES–2009–0010 and, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Ave., Portland, OR 97266; telephone 503–231–6179; facsimile 503–231–6195.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (*see* **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Our March 10, 2010, final rule (75 FR 11010) to designate critical habitat for the Oregon chub contained typographical errors in the preamble and the regulatory text, which we explain and correct in this document. For the complete final rule as published, *see* our March 10, 2010, publication (75 FR 11010). For a more complete discussion of the ecology and life history of the species, please see our March 10, 2009, proposed rule (74 FR 10412), and the Oregon Chub 5-year Review Summary and Evaluation of February 11, 2008, which is available at *http://ecos.fws.gov/docs/five_year_review/doc1859.pdf.*

Because of coding errors in our March 10, 2010, final rule (75 FR 11010), temperatures and numbers for "maximum water depth" and "average water depth" were rendered incorrect or impossible to read in several places. We correct them in this document.

Administrative Procedure Act

We find good cause to waive notice and comment on this correction, under 5 U.S.C. 533(b)(3)(B), and the 30-day delay in effective date under 5 U.S.C. 553(d). Notice and comment are unnecessary because this correction is a minor, technical correction. The substance of the regulations remains unchanged. Therefore, this correction is being published as a final rule and is effective on the date under **DATES**.

Corrections to Preamble

The second sentence in the first paragraph under the heading "Distribution and Habitat" (near top of page 11011, first column) is revised to read as follows:

The species' aquatic habitat is typically at depths of less than or equal to 2 meters (m) (6.6 feet (ft)), and has a summer subsurface water temperature exceeding 15 °Celsius (°C) (61 °Fahrenheit (°F)) (Scheerer and Apke 1997, p. 45; Scheerer 2002, p. 1073; Scheerer and McDonald 2003, p. 69).

The second paragraph under the heading "Food, Water, Air, Light, Minerals, or Other Requirements" (page 11016, third column) is revised to read as follows:

With respect to water quality, the temperature regime at a site may determine the productivity of Oregon chub at that location. Spawning activity for the species has been observed from May through early August when subsurface water temperatures exceed 15 °C (59 °F) or 16 °C (61 °F) (Scheerer and Apke 1997, p. 22; Markle et al. 1991, p. 288; Scheerer and MacDonald 2003, p. 78). The species will display normal life-history behavior at temperatures between approximately 15 and 25 °C (59 and 77 °F). The upper lethal temperature for the fish was determined to be 31 °C (88 °F) in laboratory studies (Scheerer and Apke 1997, p. 22).

The third sentence in the first paragraph under the heading "Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring" (page 11017, center column) is revised to read as follows:

Oregon chub spawn from April through September, when temperatures exceed 15 °C (59 °F), with peak activity in July.

Under the header "Primary Constituent Elements (PCEs) for the Oregon Chub," number 3 in the list (page 11018, center column) is revised to read as follows:

3. Late spring and summer subsurface water temperatures between 15 and 25 °C (59 and 78 °F), with natural diurnal and seasonal variation.

Under the header "Final Critical Habitat Designation," we make the following corrections to the text of each of the individual units:

BILLING CODE 4310–55–P

Area	Subarea	Critical habitat unit	Correct maximum water depth	Correct average water depth	Correct temperature or temperature range	Correct temperature recording date(s)	Page number of error in final rule
Area 1: Santiam River Basin—Linn and Marion Counties, Oregon	A. Mainstem Santiam River	*Unit 1A, Santiam I–5 Side Channels*	3 m (9.8 ft)	1.5 m (4.9 ft)	19.5–21 °C (60–67 °F)	July 30, 2008	11023, top of column 1
	B. North Santiam River	*Unit 1B(1), Geren Island North Channel*	2.2 m (7.2 ft)	1.8 m (5.9 ft)	26 °C (79 °F)	July 10, 2008	11023, bottom of column 1
		Unit 1B(2), Stayton Public Works Pond	2 m (6.6 ft)	1.2 m (3.9 ft)	25.5 °C (77.9 °F)	July 9, 2008	11023, top of column 2
		Unit 1B(3), South Stayton Pond	1.6 m (5.3 ft)	0.9 m (3 ft)	24.5 °C (76.1 °F)	July 9, 2008	11023, middle of column 2
		Unit 1B(4), Gray Slough	2.5 m (8.2 ft)	1.2 m (3.9 ft)	23.5 °C (74.3 °F)	July 31, 2008	11023, bottom of column 2
	C. South Santiam River	*Unit 1C, Foster Pullout Pond*	2.0 m (6.6 ft)	1.2 m (3.9 ft)	21 °C (70 °F)	July 23, 2008	11023, middle of column 3
Area 2: Mainstem Willamette River Basin—	A. McKenzie River	*Unit 2A(1), Russell Pond*	2 m (6.6 ft)	1.5 m (4.9 ft)	18.5 °C (65.3 °F)	July 23, 2008	11023, bottom of column 3
		Unit 2A(2), Shetzline Pond	2.5 m (8.2 ft)	2 m (6.6 ft)	20 °C (68 °F)	July 23, 2008	11024, middle of

Benton, Lane and Marion Counties, Oregon							column 1
		Unit 2A(3), Big Island	1.5 m (4.9 ft)	0.6 m (2.0 ft)	19 °C (66 °F)	July 23, 2008	11024, bottom of column 1
	B. Willamette River Mainstem	*Unit 2B(1), Ankeny Willow Marsh*	2 m (6.6 ft)	0.7 m (2.3 ft)	25 °C (77 °F)	July 8, 2008	11024, middle of column 2
		Unit 2B(2), Dunn Wetland	1 m (3.3 ft)	0.6 m (2.0 ft)	23 °C (73 °F)	July 28, 2008	11024, bottom of column 2
		Unit 2B(3), Finley Display Pond	2.5 m (8.2 ft)	1.5 m (4.9 ft)	19 °C (66 °F)	June 20, 2008	11024, top of column 3
		Unit 2B(4), Finley Cheadle Pond	3.3 m (10.8 ft),	1.5 m (4.9 ft)	18.5 °C (65.3 °F)	June 20, 2008	11024, middle of column 3
		Unit 2B(5), Finley Gray Creek Swamp	2.2 m (7.2 ft)	1 m (3.3 ft)	22 °C (72 °F)	July 28, 2008	11024, bottom of column 3
Area 3: Middle Fork Willamette River Basin—Lane County, Oregon		*Unit 3A, Fall Creek Spillway Ponds*	1.8 m (5.9 ft)	0.7 m (2.3 ft)	23.5 °C (74.3 °F)	July 2, 2008	11025, bottom of column 1
		Unit 3B, Elijah Bristow State Park Berry Slough	2.5 m (8.2 ft)	1.2 m (3.9 ft)	20–25 °C (68–77 °F)	July 16, 17, and 29, 2008	11025, middle of column 2
		Unit 3C, Elijah Bristow State Park Northeast	2 m (6.6 ft)	0.8 m (2.6 ft)	22 °C (72 °F)	July 22, 2008	11025, bottom of column 2

	Slough					
	Unit 3D, Elijah Bristow State Park Island Pond	2 m (6.6 ft)	1.2 m (3.9 ft)	18–25 °C (64–77 °F) at various locations within the site	July 17, 2008	11025, top of column 3
	Unit 3E, Dexter Reservoir RV Alcove (DEX 3):	1 m (3.3 ft)	0.7 m (2.3 ft)	22.5 °C (72.5 °F)	July 1, 2008	11025, middle of column 3
	Unit 3F, Dexter Reservoir Alcove (PIT1)	1 m (3.3 ft)	0.5 m (1.6 ft)	18 °C (64 °F)	July 2, 2008	11026, top of column 1
	Unit 3G, East Fork Minnow Creek Pond	1.2 m (3.9 ft)	0.5 m (1.6 ft)	19 °C (66 °F)	July 2, 2008	11026, bottom of column 1
	Unit 3H, Hospital Pond	3 m (9.8 ft)	2 m (6.6 ft)	15 °C (59 °F)	July 1, 2008	11026, top of column 2
	Unit 3I, Shady Dell Pond	1.1 m (3.6 ft)	0.5 m (1.6 ft)	21 °C (70 °F)	July 22, 2008	11026, bottom of column 2
	Unit 3J, Buckhead Creek	1.5 m (4.9 ft)	0.8 m (2.6 ft)	18–24 °C (64–75 °F)	July 15 and July 21, 2008	11026, middle of column 3
	Unit 3K, Wicopee Pond	2 m (6.6 ft)	1.2 m (3.9 ft)	17 °C (63 °F)	June 30, 2008	11027, top of column 1

BILLING CODE 4310–55–C

Correction to Regulatory Text

In our rule FR Doc. 2010–4654, as published at March 10, 2010 (75 FR 11010), there is one error in the regulatory text.

Other than this one correction to the final rule's regulatory text, all amendatory instructions and amendatory language stand.

§ 17.95 [Corrected]

■ 1. On page 11032, in the third column, revise § 17.95 under paragraph (e), under the entry for "Oregon Chub (*Oregonichthys crameri*)", paragraph (2)(iii), to read as follows:

(iii) Late spring and summer subsurface water temperatures between 15 and 25 °C (59 and 78 °F), with natural diurnal and seasonal variation.

Dated: April 2, 2010.

Sara Prigan,

Federal Register Liaison, U.S. Fish and Wildlife Service.

[FR Doc. 2010–7951 Filed 4–8–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0907141130–0112–02]

RIN 0648–AX80

Antarctic Marine Living Resources; Use of Centralized-Vessel Monitoring System and Importation of Toothfish; Re-export and Export of Toothfish; Applications for Krill Fishing; Regulatory Framework for Annual Conservation Measures

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

ACTION: Final rule.

SUMMARY: NMFS (on behalf of the Secretary of Commerce) issues this final rule to facilitate conservation and management of Antarctic Marine Living Resources (AMLR). The regulations: further detail current U.S. requirements to only allow importation and/or re-exportation of frozen toothfish or toothfish product with verifiable documentation that the harvesting vessel participated in the Centralized-Vessel Monitoring System (C-VMS) regardless of where the fish was harvested; revise the NMFS catch-documentation requirements for re-exporting toothfish and add requirements for exporting U.S.-caught toothfish; require applicants for an AMLR harvesting permit for krill to apply to NMFS no later than June 1 preceding the harvesting season for krill; and rescind the existing regulatory framework for annual management measures. The intent of the rule is to further detail requirements for importing and re-exporting toothfish, to facilitate enforcement, to fulfill U.S. obligations in the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR), and to simplify the process for informing the public of annual conservation measures.

DATES: This final rule is effective May 10, 2010.

ADDRESSES: Alan Risenhoover, Director, NMFS Office of Sustainable Fisheries, Attn: CCAMLR Rulemaking, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Alan Risenhoover at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to *David__Rostker@ob.eop.gov*, or fax to (202) 395–7825.

This **Federal Register** document is also accessible via the Internet at: *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

FOR FURTHER INFORMATION CONTACT: Robert Gorrell at 301–713–2341 or via e-mail at *robert.gorrell@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published the proposed rule for this action in the **Federal Register** on November 27, 2009 (74 FR 62278), with a public comment period through December 28, 2009. NMFS received only one comment and it was outside the scope of the rulemaking. Because no substantive comments on the proposed rule were received and because no new information dictates otherwise, no changes have been made to the regulatory text published in the proposed rule.

Background

U.S. participation in Antarctic fisheries, and in the trade of species managed by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), is managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq.* NMFS implements conservation measures developed by CCAMLR and adopted by the United States, through regulations at 50 CFR part 300, subpart G. Changes to the existing regulations are necessary to facilitate compliance, to incorporate new conservation measures, to facilitate enforcement of new and existing conservation measures, and to simplify the process for informing the public of annual conservation measures.

This final rule further details current U.S. requirements to only allow importation and/or re-exportation of frozen toothfish or toothfish product with verifiable documentation that the harvesting vessel participated in the Centralized-Vessel Monitoring System (C-VMS) regardless of where the fish was harvested. This final rule also revises the NMFS catch-documentation requirements for re-exporting toothfish and adds requirements for exporting U.S.-caught toothfish. In addition, this final rule requires applicants for an AMLR harvesting permit for krill to apply to NMFS no later than June 1 preceding the harvesting season for krill. Lastly, this final rule rescinds the existing regulatory framework for annual management measures. Some discussion of these measures appears below, but for a more detailed discussion of these measures, please see the preamble to the proposed rule published on November 27, 2009 (74 FR 62278).

Importing and/or Re-exporting Toothfish

This final rule does not change current requirements for U.S. vessels harvesting AMLR to use real-time centralized VMS (or C-VMS) and for dealers seeking preapproval to import toothfish into the United States to submit to NMFS verifiable documentation of C-VMS use. NMFS will use the information submitted by dealers seeking to import frozen *Dissostichus* spp. into the U.S. market to verify that the harvesting vessel was reporting its positions, via real-time centralized VMS (or C-VMS), from the time the vessel left port to the time that the vessel returned to port and at all points in between (i.e., port-to-port).

This final rule adds definitions for "Centralized Vessel Monitoring System (C-VMS)", "port-to-port", and "real-time" and further details the U.S. requirement that importation, re-exportation, and/or exportation of frozen toothfish is allowed only with verifiable documentation that the harvesting vessel participated in real-time C-VMS port-to-port. Shipments of frozen *Dissostichus* spp. are required to have such verifiable documentation except where the *Dissostichus* spp. being shipped was harvested during a fishing trip that began prior to September 24, 2007.

Also, the existing definition of "Vessel Monitoring System (VMS)" is revised to clarify that the VMS system that uses a mobile transceiver unit on board foreign-flagged vessels does not need to be approved by NMFS. Similarly, the heading for existing § 300.116 "Requirements for a vessel monitoring system" is revised to read "Requirements for a vessel monitoring system for U.S. vessels".

This final rule revises the catch-documentation requirements for re-

exporting toothfish by clarifying that the application for a *Dissostichus* species re-export document must identify: (1) the container number for the shipment if the shipment is to be re-exported by vessel; (2) the flight number and airway bill/bill of lading if the shipment is to be re-exported by air; (3) the truck registration number and nationality if the shipment is to be re-exported by ground transportation; or (4) the railway transport number if the shipment is to be re-exported by rail. This final rule makes clear that the exporter would receive an electronically-generated *Dissostichus* species re-export document.

This final rule also adds a new paragraph § 300.107(c)(7) identifying reporting and recordkeeping requirements for exports of *Dissostichus* species. These requirements are nearly identical to requirements for re-exports and pertain to U.S.-caught toothfish that dealers want to export.

Krill Fishing

This final rule requires applicants for an AMLR harvesting permit for krill to submit an application to the Assistant Administrator for Fisheries, NMFS, no later than June 1 prior to the krill season opening on December 1 of the same year (see Harvesting Permits, § 300.112). In addition to the information already required of an applicant for an AMLR harvesting permit, the applicant for a permit to harvest krill is required by this final rule to identify, to the extent possible, the products to be derived from the anticipated catch of krill.

Framework for Annual Measures

This final rule rescinds the existing regulatory framework for annual management measures to ease the administrative burden and cost of publishing conservation measures that are readily available on the CCAMLR website at *http://www.ccamlr.org*. If the United States should formally object to any conservation measure adopted by CCAMLR, notice of that objection will be published in the **Federal Register**. NMFS will publish in the **Federal Register** any regulatory measure that it believes is necessary to implement its responsibilities under the Antarctic Marine Living Resources Convention Act of 1984 and may implement conservation measures adopted by CCAMLR either through the imposition of permit conditions or through rulemaking, as appropriate.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Classification

The Antarctic Marine Living Resources Convention Act of 1984

The Assistant Administrator for Fisheries, NMFS, determined that this final rule is consistent with the Antarctic Marine Living Resources Convention Act of 1984, codified at 16 U.S.C. 2431 *et seq.*

Executive Order 12866

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

Regulatory Flexibility Act (RFA)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

This final rule further details current U.S. requirements to only allow importation and/or re-exportation of frozen toothfish or toothfish product with verifiable documentation that the harvesting vessel participated in the C-VMS regardless of where the fish was harvested; revise the NMFS catch-documentation requirements for re-exporting toothfish and add requirements for exporting U.S.-caught toothfish; require applicants for an AMLR harvesting permit for krill to apply to NMFS no later than June 1 preceding the harvesting season for krill; and rescind the existing regulatory framework for annual management measures.

During the past several years, there have been 5 vessels (2 for toothfish, 2 for krill, and 1 for crab) and 80 dealers who could fall within the scope of NMFS regulations to implement CCAMLR conservation measures. All U.S. vessels and U.S. dealers are considered small entities under the "Small Business Size Regulations" established by the SBA under 13 CFR 121.201. However, the only costs associated with this rulemaking are for: (1) dealers providing mode-of-shipment information on applications for toothfish re-export and export documents; and (2) for applicants for krill harvesting permits to provide information on the products to be derived from krill catch. The costs and time associated with these requirements is de minimis. The C-VMS aspects of the rule would not change current practices and rescinding the framework for annual measures would not impose any economic impact on small business entities.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none has been prepared.

Paperwork Reduction Act (PRA)

This final rule contains two new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the PRA: providing mode-of-shipment information on applications for toothfish re-export documents; and providing information, to the extent possible, on the products to be derived from krill catch on applications for krill harvesting permits. These collection-of-information requirements have been approved by OMB under OMB Control Number 0648–0194 and these new requirements are not expected to change the currently approved burden under OMB Control Number 0648–0194 of 294 hours.

Notwithstanding any other provision of 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 PRA requirements unless that information collection displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Fishing vessels, Foreign relations, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: April 6, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300, subpart G is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart G—Antarctic Marine Living Resources

■ 1. The authority citation for 50 CFR part 300, subpart G, continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

■ 2. In § 300.101, the definitions of "Centralized Vessel Monitoring System (C-VMS)", "Port-to-port", and "Real-time" are added in alphabetical order, and the definition of "Vessel Monitoring System (VMS)" is revised, to read as follows:

§ 300.101 Definitions.

* * * * *

Centralized Vessel Monitoring System (C-VMS) means a system that uses satellite-linked vessel monitoring devices to allow for the reporting of vessel positional data, either directly to the CCAMLR Secretariat or to the CCAMLR Secretariat through the relevant Flag State.

* * * * *

Port-to-port means from the time the vessel leaves port to the time that the

vessel returns to port and at all points in between.

Real-time means as soon as possible, but at least every 4 hours with no more than a 4–hour delay.

* * * * *

Vessel Monitoring System (VMS) means a system that uses a mobile transceiver unit on vessels that take AMLR, and that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels, to receive automatic transmission of positional and other information, consistent with relevant CCAMLR conservation measures.

■ 3. In § 300.107, paragraphs (a)(4), (c)(5)(i) introductory text, (c)(5)(i)(A), (c)(5)(iii), and (c)(6) are revised, and new paragraph (c)(7) is added, to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

* * * * *

(a) * * *

(4) Install a NMFS approved VMS unit on board U.S. vessels harvesting AMLR for use in real-time C-VMS port-to-port reporting to a NMFS-designated land-based fisheries monitoring center or centers. The requirements for the installation and operation of the VMS are set forth in § 300.116.

* * * * *

(c)* * *

(5)* * *

(i)In order to import frozen *Dissostichus* species into the United States, any dealer must:

(A) Submit a preapproval application including the document number and export reference number on the DCD corresponding to the intended import shipment and, if necessary, additional information for NMFS to verify the use of real-time C-VMS port-to-port regardless of where the fish were harvested; and receive preapproval from NMFS.

* * * * *

(iii) Any dealer who imports fresh *Dissostichus* species must complete a report of each shipment and submit the report to NMFS within 24 hours following importation. Verification of the use of real-time C-VMS port-to-port is not required for imports of fresh *Dissostichus* species.

* * * * *

(6) *Re-export.* (i) In order to re-export *Dissostichus* species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a *Dissostichus* re-export document that includes the following information:

(*1*) The species, product type, and amount from the original DCD(s) that is requested for export in the particular export shipment;

(*2*) The number of the original DCD(s);

(*3*) The name and address of the importer and point of import for the original import into the United States, or by submitting a copy of the preapproval issued for the original import;

(*4*) One of the following:

(*i*) The Container Number for the shipment if shipment is to be re-exported by vessel;

(*ii*) The Flight Number and Airway Bill/Bill of Lading if shipment is to be re-exported by air;

(*iii*) The Truck Registration Number and Nationality if shipment is to be re-exported by ground transportation; or

(*iv*) The Railway Transport Number if shipment is to be re-exported by rail.

(*5*) The dealer/exporter's name, address, and AMLR permit number; and

(*6*) The dealer's signature.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically-generated *Dissostichus* re-export document.

(ii) For frozen *Dissostichus* species, re-export documents will be generated upon verification of the use of real-time C-VMS port-to-port except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

(iii) Dealers must include the original validated *Dissostichus* re-export document with the re-export shipment.

(iv) Any dealer who re-exports Dissostichus species must retain a copy of the re-export document at his/her place of business for a period of 2 years from the date on the DCD.

(7) *Export.* (i) In order to export U.S.-harvested *Dissostichus* species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a *Dissostichus* export document that includes the following information:

(*1*) The species, product type, and amount from the original DCD(s) that is requested for export in the particular export shipment;

(*2*) The number of the original DCD(s);

(*3*) One of the following:

(*i*) The Container Number for the shipment if shipment is to be exported by vessel;

(*ii*) The Flight Number and Airway Bill/Bill of Lading if shipment is to be exported by air;

(*iii*) The Truck Registration Number and Nationality if shipment is to be exported by ground transportation; or

(*iv*) The Railway Transport Number if shipment is to be exported by rail.

(*4*) The dealer/exporter's name, address, and AMLR permit number;

(*5*) For frozen *Dissostichus* species, verification of the use of real-time C-VMS port-to-port except for Dissostichus species harvested during fishing trips that began prior to September 24, 2007; and

(*6*) The dealer's signature.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically-generated *Dissostichus* export document.

(ii) Dealers must include the original validated *Dissostichus* export document with the export shipment.

(iii) Any dealer who exports Dissostichus species must retain a copy of the export document at his/her place of business for a period of 2 years from the date on the DCD.

■ 4. Section 300.111 is removed and reserved.

§ 300.111 [Amended]

■ 5. In § 300.112 paragraph (c) is revised to read as follows:

§ 300.112 Harvesting permits.

* * * * *

(c) *Application.* Application forms for harvesting permits are available at *www.nmfs.noaa.gov.gpea__forms.htm*.

(1)A separate fully completed and accurate application must be completed and received by NMFS for each vessel for which a harvesting permit is requested.

(2) Applications for permits to harvest species other than krill must be received by NMFS at least 90 days before the date anticipated for the beginning of harvesting.

(3)Applications for a permit to harvest krill must be received by NMFS no later than June 1 immediately prior to the season in which the harvesting would occur. The applications must, to the extent possible, identify the products to be derived from the anticipated krill catch.

* * * * *

■ 6. In § 300.114 paragraph (d) is revised to read as follows:

§ 300.114 Dealer permits and preapproval.

* * * * *

(d) Issuance. NMFS may issue a dealer permit or preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any CCAMLR conservation measure or in violation of any regulation in this subpart. No preapproval will be issued for *Dissostichus* species without verifiable documentation, to include VMS reports with vessel location and messages, of the use of real-time C-VMS

port-to-port by the vessel that harvested such Dissostichus species, except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

* * * * *

■ 7. In § 300.116 the heading is revised to read as follows:

§ 300.116 Requirements for a vessel monitoring system for U.S. vessels.

* * * * *

■ 8. In § 300.117 paragraph (bb)(9) is revised and paragraphs (gg) and (hh) are added to read as follows:

§ 300.117 Prohibitions.

* * * * *

(bb)* * *

(9) Fail to use real-time C-VMS port-to-port on board U.S. vessels harvesting AMLR in the Convention Area.

* * * * *

(gg) Harvest any AMLR in Convention waters without a harvesting permit required by this subpart.

(hh) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control, or possession of, any frozen *Dissostichus* species without verifiable documentation of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species unless the *Dissostichus* species was harvested during a fishing trip that began prior to September 24, 2007.

[FR Doc. 2010–8134 Filed 4–8–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0912081429–0114–02]

RIN 0648–XS55

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2010 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Final rule.

SUMMARY: This final rule implements 17 sector operations plans and contracts for fishing year (FY) 2010. In order to be considered for approval on a parallel track with Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP), representatives from 17 sectors submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2010. NMFS received sector operations plans and contracts from the Northeast Fishery Sectors (NFS) II through XIII, the Sustainable Harvest Sector (SHS), the Tri-State Sector (TSS), the Northeast Coastal Communities Sector (NCCS), the Georges Bank Cod Fixed Gear Sector (FGS), and the Port Clyde Community Groundfish Sector (PCCGS).

Following approval of the Amendment 16 sector measures and provisions, the Administrator, NE Region, NMFS (Regional Administrator) has partially approved the operations plans and contracts, and allocated an annual catch entitlement (ACE) of certain NE multispecies stocks to the NFS II–XIII, the FGS, the SHS, the TSS, the PCCGS, and the NCCS.

DATES: Effective May 1, 2010 through April 30, 2011.

ADDRESSES: Copies of each sector's final operations plan, contract, and environmental assessment (EA), and the Final Regulatory Flexibility Analysis (FRFA) are available from the NMFS Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Whitmore, Sector Policy Analyst, phone (978) 281–9182, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: A proposed rule soliciting public comment on 17 sector operations plans and contracts was published in the **Federal Register** on December 22, 2009 (74 FR 68015), with public comments accepted through January 21, 2010. After review of the public comments, NMFS has partially approved the 17 sector operations plans and contracts, determining the operations plans to be consistent with the goals of the FMP, as described in Amendment 16 and other applicable laws, and in compliance with the proposed measures that govern the development and operation of a sector as specified in Section 4.2.3 of Amendment 16.

Background

While the Amendment 13 final rule (69 FR 22906, April 27, 2004) implemented the Georges Bank (GB) Cod Hook Sector in 2004, and the Framework Adjustment (FW) 42 final rule (71 FR 62156, October 23, 2006) implemented the FGS in 2006, Amendment 16 revises and expands the rules for these two existing sectors and authorizes an additional 17 new sectors, including the NFS I through XIII, the SHS, the TSS, the NCCS, and the PCCGS. Managers of two (2) of the 19 sectors authorized under Amendment 16 did not submit an operations plan for FY 2010.

Three separate actions associated with Amendment 16 are applicable to NE multispecies permit holders for FY 2010: A proposed rule that contains implementing regulations for the partially approved Amendment 16 (74 FR 69382, December 31, 2009) includes rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing; revisions to existing management measures necessary to end overfishing, rebuild overfished stocks, and mitigate adverse economic impacts of increased effort controls; and significant revisions to existing sector management measures. In accordance with Amendment 16, a proposed rule specific to sectors published on December 22, 2009, (74 FR 68015) and discussed authorization of 17 sector operations plans and contracts for FY 2010. This final rule implements the approved operations plans. Also in accordance with Amendment 16, a third proposed rule for FW 44 published on February 1, 2010 (75 FR 5016), which proposed specifications of catch levels for FY 2010–2012, in accordance with the process specified in Amendment 16, and detailed additional management measures to augment Amendment 16.

Thus, the final rules for Amendment 16, sector operations, and FW 44 are closely related, and each rule relies on the other two. It is necessary to employ all three rules to implement Amendment 16 as intended by the New England Fishery Management Council (Council). While Amendment 16 implements management measures and processes for the FMP, FW 44 specifies catch levels according to the policies and procedures in Amendment 16, and this sector operations rule authorizes the operation of sectors. For example, Amendment 16 must be implemented for the 17 new sectors to be authorized. FW 44 specifies overfishing levels, acceptable biological catches, annual catch limits (ACLs) and allocates catch among components of the fishery, including the division of the catch between sector and common pool vessels according to the Amendment 16 ACL specification process. Final rules for the three actions, if all are approved,

are intended to be published nearly simultaneously in order to become effective concurrently on May 1, 2010. Therefore, NMFS suggests that interested readers review all three rules in order to fully understand the measures being implemented pursuant to Amendment 16 and its related rulemakings.

Permit owners that have indicated their intent to participate in one of the 17 approved sectors account for 812 of the 1,477 eligible NE multispecies permit holders, representing approximately 98 percent of the historical commercial NE multispecies catch from the qualifying period. Table 1 (below) includes permit owners who joined a sector as of January 22, 2010. These permit owners have until April 30, 2010, to withdraw from a sector and fish in the common pool for FY 2010. This final rule responds to public comments on the proposed rule and implements the approved additional regulation exemptions that were requested by the individual sectors.

Amendment 16 defines a sector as "[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives." A sector's total allowable catch (TAC) is referred to as an ACE. Regional Administrator approval is required in order for the sectors to be authorized to fish and to be allocated an ACE for most stocks of regulated NE multispecies during each FY. Each individual sector's ACE for a particular stock represents a share of that stock's ACL available to commercial NE multispecies vessels, based upon the potential sector contributions (PSC) of permits participating in that sector for that FY. Sectors are self-selecting, meaning each sector maintains the ability to choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire. Table 2 shows the ACE percentages each sector will receive according to the permits enrolled as of January 22, 2010, while Tables 3a and 3b provide the corresponding ACE amounts each sector will be allocated.

Amendment 16 will allow sectors to trade ACE for use during that FY. Although some of the assigned ACEs to one sector are as high as 50 percent, and technically, a sector could acquire an unlimited amount of ACE from another sector by transferring ACE, analysis by the Groundfish Plan Development Team (PDT) during the development of Amendment 16 suggested that it is unlikely that any one sector could accumulate a sufficient share of a stock to exercise market power over the rest of the fishery. Moreover, because sector ACEs are temporary in nature and depend upon the collective PSCs of participating vessels, no one sector will be allocated a permanent share of any resource. This further limits the ability of a sector to influence market conditions for a particular stock over the long term. Allowing sectors to trade ACE will minimize the influence of the initial sector allocation, including any cap on initial allocations.

If a sector intends to fish in a given FY, it must submit an operations plan, sector contract, and EA to NMFS by September 1 of the year prior to the FY in question. On September 1, 2009, 17 sectors submitted to NMFS operations plans and contracts (as single documents) for FY 2010. The operations plans contain the rules under which each sector will fish and the legal contract that binds members to a sector and its operations plan. Sectors will be allocated all regulated multispecies stocks for which members have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and Southern New England/Mid-Atlantic (SNE/MA) winter flounder. In addition, sectors will not be allocated ocean pout. Sector vessels must retain all legal-sized allocated groundfish while fishing on a sector trip. Catch of all allocated groundfish stocks by any of a sector's vessels will count against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish catch in an exempted fishery, or catch of yellowtail flounder in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, American lobster (with non-trap gear) and spiny dogfish will have their groundfish catch (including discards) on those trips debited against the sector's ACE, unless the vessel is fishing for such species under the provisions of a NE multispecies exempted fishery. Discard rates applied to sectors will be determined by NMFS as developed from at-sea monitoring observations.

As provided in Amendment 16, ACE can be transferred between sectors, although ACE transfers to or from common pool vessels are prohibited. Both the SHS and the TSS operations plans describe how landings history from permits within the sector will be attributed to sector members. Under Amendment 16, however, catch history is frozen; therefore, the statements in the contracts for the SHS and TSS have no legal standing unless a subsequent Council action adopts them. Each sector must ensure that its ACE is not exceeded during the FY. Sectors are required to monitor their landings, track their available ACE, and submit weekly catch reports to NMFS. Once a sector's ACE for a particular stock is caught, a sector is required to cease all fishing operations in that stock area until it acquires additional ACE for that stock. Each sector must also submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing all of the sector's catch (landings and discards of all stocks by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector.

All sector operations plans and contracts detail procedures to enforce the sector operations plan, explain sector monitoring and reporting requirements, present a schedule of penalties, and provide authority to sector managers to issue stop fishing orders to sector members. Amendment 16 specifies that sector members may be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector contract approved for FY 2010 states that the sector will withhold an initial reserve from each member's individual allocation to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2010, each sector will allow its members to harvest an amount of fish equal to the PSC that each individual member's permit contributed to the sector's ACE.

Amendment 16 contains several "universal" exemptions that are applicable to all sectors. These universal exemptions include exemptions from trip limits on allocated stocks, the GB Seasonal Closed Area, NE multispecies days-at-sea (DAS) restrictions, the requirement to use a 6.5-inch (16.51-cm) mesh codend when fishing with selective gear on GB, and portions of the Gulf of Maine (GOM) Rolling Closure Areas. Sectors may request additional exemptions from applicable regulations in their sector operations plan. However, Amendment 16 states that sector vessels may not request exemptions from certain NE multispecies management measures, including year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (not including DAS reporting requirements).

All vessels that fish in an approved sector, with the exception noted below, will receive a letter of authorization (LOA) for FY 2010 to fish under regulations that apply to the sector in which they are enrolled for the FY. Permits and vessels that committed to NFS IV, which is a lease-only sector, will not receive an LOA to fish, as no vessels in that sector are authorized to actively fish.

In order to comply with the National Environmental Policy Act (NEPA), an EA was prepared for each operations plan. All sector EAs are tiered from the Environmental Impact Statement (EIS) for Amendment 16. The summary findings of each EA conclude that each sector will likely produce similar effects that result in non-significant impacts. An analysis of aggregate sector impacts was also conducted and Findings of No Significant Impact for all sector EAs were issued by the Regional Administrator on February, 26, 2010.

TABLE 1—SUMMARY OF THE NUMBER OF PERMITS, ACTIVE VESSELS, AND ACTIVE PERMITS FOR THE FY 2010 SECTORS

Sector name	Number of individual permits*	Percentage (%) of individual permits	Number of active vessels**	Percentage (%) of active vessels within the fleet***	Percentage (%) of permits that are active within the sector
FGS	95	6.43	50	6.77	52.63
NCCS	19	1.29	19	2.57	100.00
NFS II	81	5.48	43	5.82	53.09
NFS III	81	5.48	50	6.77	61.73
NFS IV	48	3.25	0	0.00	0.00
NFS V	41	2.78	37	5.01	90.24
NFS VI	18	1.22	8	1.08	44.44
NFS VII	27	1.83	21	2.84	77.78
NFS VIII	22	1.49	16	2.17	72.73
NFS IX	51	3.45	22	2.98	43.14
NFS X	44	2.98	34	4.60	77.27
NFS XI	48	3.25	38	5.14	79.17
NFS XII	8	0.54	4	0.54	50.00
NFS XIII	35	2.37	29	3.92	82.86
PCGGS	43	2.91	28	3.79	65.12
SHS	129	8.73	44	5.95	34.11
TSS	22	1.49	10	1.35	45.45
All Sectors	812	54.98	453	61.30	55.79
Common Pool	665	45.02	286	38.70	

*The data are based on signed sector contracts as of January 22, 2010.
** The data are based on each sector's final EA as of February 18, 2010.
*** In 2007, 601 limited access multispecies vessels and 138 open-access vessels landed groundfish.

TABLE 2—PERCENTAGE (%) OF ACE EACH SECTOR WILL RECEIVE BY STOCK FOR FY 2010 *†

Sector name	GB cod**	GOM cod	GB haddock**	GOM haddock	GB yellowtail flounder	SNE/MA yellowtail flounder	CC/GOM yellowtail flounder	Plaice	Witch flounder	GB Winter flounder	GOM Winter flounder	Redfish	White hake	Pollock
FGS	28.03	1.90	6.41	1.29	0.01	0.18	1.83	0.55	0.80	0.03	2.24	2.89	5.92	7.81
NCCS	0.16	0.47	0.12	0.23	0.84	0.53	0.46	0.14	0.21	0.07	0.45	0.44	0.87	0.44
NFS II	5.48	19.19	11.63	17.87	1.70	1.68	19.31	8.37	13.24	1.69	19.85	16.54	6.17	12.34
NFS III	1.19	16.43	0.17	11.65	0.05	0.40	9.01	4.41	3.03	0.03	10.91	1.47	5.12	7.70
NFS IV	4.71	8.66	5.42	6.72	2.16	2.68	7.20	9.24	9.28	0.71	7.63	6.46	7.97	5.65
NFS V	2.95	0.23	5.40	0.68	9.62	26.67	1.69	2.24	2.62	2.60	0.71	0.42	0.39	0.43
NFS VI	1.87	1.90	2.67	3.46	1.34	4.85	2.08	3.58	4.19	0.84	3.33	5.48	3.77	3.30
NFS VII	6.01	0.61	5.25	0.73	16.14	4.15	4.86	4.02	4.06	17.02	3.22	0.56	0.78	0.78
NFS VIII	7.36	0.47	6.61	0.20	15.93	5.96	7.29	2.44	3.13	20.63	3.36	0.44	0.51	0.64
NFS IX	12.49	1.67	10.32	4.77	18.95	7.14	9.63	7.55	7.63	33.65	2.58	5.79	4.10	3.82
NFS X	0.97	5.04	0.26	2.70	0.02	0.47	11.48	1.73	2.89	0.01	16.22	0.57	0.93	1.45
NFS XI	0.40	13.69	0.04	3.23	0.00	0.01	2.22	1.87	1.86	0.00	2.13	1.88	4.85	9.28
NFS XII	0.04	1.30	0.00	0.28	0.00	0.00	0.51	0.38	0.28	0.00	0.35	0.07	0.04	0.06
NFS XIII	7.54	0.76	14.09	0.61	15.48	11.45	3.36	3.43	4.55	10.83	1.69	4.54	1.81	2.23
PCGGS	0.21	4.76	0.05	2.32	0.00	0.70	0.98	6.42	4.45	0.01	2.15	2.56	4.62	4.30
SHS	16.71	17.93	29.60	40.93	8.34	11.50	10.91	39.74	34.19	8.50	7.20	48.99	50.28	37.99
TSS	0.86	1.10	1.46	0.74	7.24	1.22	3.20	1.41	1.39	1.94	3.54	0.01	0.14	0.06
All Sectors	96.98	96.09	99.51	98.42	97.82	79.60	96.01	97.52	97.80	98.56	87.57	99.10	98.27	98.29
Common Pool	3.02	3.91	0.49	1.58	2.18	20.40	3.99	2.48	2.20	1.44	12.43	0.90	1.74	1.72

* The data in this table are based on signed sector contracts as of January 22, 2010.
** Eastern U.S./Canada cod and haddock percentages equal the PSC % of GB cod and GB haddock, respectively.
† Percentages have been rounded to the nearest hundredth of a percent in this table, but PSC data are calculated to seven decimal places. Therefore, in some cases, this table shows a sector allocated 0% of an ACE, when in fact that sector is allocated a small amount of that stock.

TABLE 3A—ACE (IN METRIC TONS) EACH SECTOR WILL RECEIVE BY STOCK FOR FY 2010 *

Sector name	GB cod east	GB cod west	GOM cod	GB haddock east	GB haddock west	GOM haddock	GB yellowtail flounder	SNE/MA yellowtail flounder	CC/GOM yellowtail flounder	Plaice	Witch flounder	GB winter flounder	GOM winter flounder	Redfish	White hake	Pollock
FGS	95	867	87	768	1822	11	0	1	14	16	7	0	4	198	151	215
NCCS	1	5	22	14	34	2	8	2	4	4	2	1	1	30	22	12
NFS II	19	169	876	1394	3309	147	16	5	150	238	113	31	31	1132	158	339
NFS III	4	37	750	21	49	96	0	1	70	126	26	1	17	100	131	211
NFS IV	16	146	395	650	1543	55	21	8	56	263	79	13	12	442	204	155
NFS V	10	91	11	648	1537	6	93	83	13	64	22	48	1	29	10	12
NFS VI	6	58	87	321	761	29	13	15	16	102	36	16	5	375	96	91
NFS VII	20	186	28	630	1495	6	156	13	38	115	35	315	5	38	20	21
NFS VIII	25	228	21	792	1881	2	154	18	57	69	27	382	5	30	13	18
NFS IX	42	386	76	1237	2936	39	183	22	75	215	65	623	4	396	105	105
NFS X	3	30	230	31	74	22	0	1	89	49	25	0	26	39	24	40
NFS XI	1	12	625	4	11	27	0	0	17	53	16	0	3	129	124	255
NFS XII	0	1	59	1	1	2	0	0	4	11	2	0	1	5	1	2
NFS XIII	25	233	35	1689	4009	5	149	36	26	98	39	201	3	311	46	61
PCGGS	1	6	217	6	14	19	0	2	8	183	38	0	3	175	118	118
SHS	56	517	819	3549	8422	338	80	36	85	1132	291	157	11	3354	1285	1044
TSS	3	27	50	175	416	6	70	4	25	40	12	36	6	1	4	2
All Sectors**	328	2999	4389†	11928†	28310†	812	943	247	748	2777	833	1826†	138	6786†	2522†	2701
Common Pool**	10	93	178	60	142	13	21	63	31	71	19	26	20	62	44	47
Total**	338	3092	4567	11988	28452	825	964	310	779	2848	852	1852	158	6848	2566	2748

* The data in this table are based on signed sector contracts as of January 22, 2010. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocated 0 metric tons, but that sector is allocated a small amount of that stock in pounds.
** These totals are based off of the groundfish sub-ACLs provided in FW 44.
† These totals are based off the groundfish sub-ACLs provided in FW 44 and do not equal the totals of all sector ACEs when summed due to rounding differences.

TABLE 3B—ACE (IN 1,000 LBS.) EACH SECTOR WILL RECEIVE BY STOCK FOR FY 2010 *

Sector name	GB cod east	GB cod west	GOM cod	GB had-dock east	GB had-dock west	GOM had-dock	GB yellowtail flounder	SNE/MA yellowtail flounder	CC/GOM yellowtail flounder	Plaice	Witch flounder	GB winter flounder	GOM winter flounder	Redfish	White hake	Pollock
FGS	209	1911	191	1693	4018	24	0	1	31	35	15	1	8	437	334	473
NCCS	1	11	48	32	76	4	18	4	8	9	4	3	2	67	49	27
NFS II	41	374	1932	3073	7294	325	36	11	332	526	249	69	69	2496	348	747
NFS III	9	81	1654	46	109	212	1	3	155	277	57	1	38	221	289	466
NFS IV	35	321	871	1433	3401	122	46	18	124	580	174	29	27	975	449	343
NFS V	22	201	23	1428	3388	12	204	182	29	140	49	106	2	63	22	26
NFS VI	14	128	191	707	1678	63	28	33	36	225	79	34	12	827	212	200
NFS VII	45	410	61	1389	3296	13	343	28	83	253	76	695	11	85	44	47
NFS VIII	55	502	47	1747	4146	4	339	41	125	153	59	842	12	66	29	39
NFS IX	93	851	168	2727	6472	87	403	49	165	474	143	1374	9	873	231	232
NFS X	7	66	507	68	162	49	0	3	197	108	54	0	56	86	52	88
NFS XI	3	27	1378	10	23	59	0	0	38	117	35	0	7	283	273	562
NFS XII	0	3	131	1	3	5	0	0	9	24	5	0	1	11	2	4
NFS XIII	56	514	77	3724	8838	11	329	78	58	215	85	442	6	685	102	135
PCGGS	2	14	479	13	30	42	0	5	17	403	84	0	8	386	260	260
SHS	124	1139	1805	7823	18567	744	177	79	187	2495	642	347	25	7394	2833	2302
TSS	6	59	110	387	918	14	154	8	55	89	26	79	12	2	8	4
All Sectors **	723	6611	9676 †	26297 †	62413 †	1790	2079	544	1649	6123	1837	4026 †	305	14961 †	5560 †	5955
Common Pool **	23	206	392	132	313	29	46	139	69	156	41	57	43	137	98	104
Total **	746	6817	10068	26429	62726	1819	2125	683	1718	6279	1878	4083	348	15098	5658	6059

* The data in this table are based on signed sector contracts as of January 22, 2010. Numbers are rounded to the nearest thousand lb. Sectors that appear to be allocated 0 are in fact allocated less than 1,000 lb of that stock.

** These totals are based off of the groundfish sub-ACLs provided in FW 44.

† These totals are based off the groundfish sub-ACLs provided in FW 44 and do not equal the totals of all sector ACEs when summed due to rounding differences.

Approved Sector Exemption Requests

In addition to the universal exemptions in Amendment 16, sectors requested several additional exemptions from the NE multispecies regulations in their sector operations plans. After thorough review and consideration of public comments on the exemption requests, NMFS authorizes exemptions from the following regulations for the individual sectors that requested them: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limitation on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; and (7) DAS Leasing Program length and horsepower restrictions. Details of these exemptions are discussed below.

1. 120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels

This measure was implemented in 1997 under FW 20 (62 FR 15381, April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types (the proposed rule for this action erroneously stated that this action had been implemented in 1996 under Amendment 7). Regulations at § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. This measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because sectors are restricted to an ACE for each groundfish stock, which limits overall fishing mortality. Because sector vessels are prohibited from discarding all legal-sized allocated fish when on a sector trip, and are restricted by their ACE, vessels will likely fish more selectively, which in turn, can increase each vessel's catch per unit of effort (CPUE) and reduce the number of days that fixed gear is in the water. Similarly, protected species (such as harbor porpoise and humpback whales) may benefit from less fishing effort and fewer gear days. Therefore, exemptions from the Day gillnet vessel 120-day block requirement are granted for FY 2010 to the following sectors that requested this exemption: NFS III, NFS XI, FGS, SHS, TSS, and PCCGS.

2. 20-Day Spawning Block

Regulations at § 648.82(g) require vessels to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning of cod is most prevalent in the GOM. While this measure was designed to reduce fishing effort on spawning fish stocks, sector vessels will utilize an ACE to restrict their fishing mortality. Undersized fish caught by sector vessels cannot be kept and, additionally, the catch will count against the sector's ACE. This creates a strong incentive for sectors to avoid catching undersized fish. In addition, there are minimal temporal and spatial restrictions associated with this regulation, and allowing fishermen to select any 20-day period out of the fishery does not necessarily prevent them from harvesting spawning fish. Based on this information, an exemption from the 20-day spawning block out of the fishery is granted for FY 2010 to the following sectors that requested this exemption: The NCCS, the SHS, and the TSS.

3. Limitation on the Number of Gillnets for Day Gillnet Vessels

One sector, the SHS, requested that their vessels be allowed to fish up to 150 gillnets (any combination of flatfish or roundfish nets) in each of the groundfish regulated mesh areas (RMAs). Current gear restrictions in the RMAs restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)(B)(2)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)(B)(2)); and 75 gillnets in the SNE and MA RMAs (§ 648.80(b)(2)(iv)(B)(1), and § 648.80(c)(2)(v)(B)(1), respectively). Regulations require nets to be marked with either one or two tags per gillnet depending on the type of net and RMA fished, for the purpose of enforcing gillnet limits. These restrictions were implemented in 1996 under Amendment 7 and revised in Amendment 13 to prevent an uncontrolled increase in the number of nets being fished, thus undermining the applicable DAS effort controls. Because this measure was designed to control fishing effort, NMFS believes that a net restriction is no longer necessary, since the sector is confined to an ACE for each stock, which caps overall fishing effort. Although this exemption could allow fishing effort from gillnet vessels in the SHS to increase if the SHS receives additional ACE through a transfer from another sector, sectors that trade ACE to SHS would have a reduction in effort and gear use; any additional effort resulting from this exemption would likely be offset between trading sectors. In addition ACLs cap the entire fleet's total catch. Therefore, SHS vessels are granted this exemption and are authorized to use up to 150 roundfish or flatfish nets in each area (up to 150 nets total). SHS vessels are also exempt from the current tagging requirements and, instead, will be required to mark their gear with one tag per net. The LOA issued to the sector vessels that qualify for this exemption will specify the tagging provisions to ensure it is an enforceable provision.

4. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

Both NFS III and XI requested an exemption from current regulations that prohibit one vessel from hauling another vessel's gillnet gear (§§ 648.14(k)(6)(ii)(A) and 648.84). These sectors argued that the regulations pertaining to gear-marking controls, setting, and hauling responsibilities are no longer necessary, because the sector would be confined to an ACE for each stock, and that "community" fixed gear would allow fishermen greater flexibility. In addition, the sectors argued that shared fixed-gear fishing effort could potentially reduce the amount of gillnet gear in the water and minimize the use of gear to "hold" additional bottom ground. Pursuant to a request by NMFS, both sectors that requested this exemption have specified in their operations plans that all vessels participating in community fixed gear will be held jointly liable for any violations associated with that gear. Given this, NMFS endorses the efforts by these two sectors to reduce the amount of gillnet gear in the water and approves this exemption request. The LOA issued to the sector vessels that qualify for this exemption will specify the tagging provisions to ensure it is an enforceable provision.

5. Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

The FGS requested an exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Current regulations at § 648.80(a)(4)(iv)(B), which prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB, were implemented as a groundfish

mortality control under Amendment 13. The FGS proposed that this exemption would increase efficiency of its gillnet vessels by allowing them to haul additional nets per trip—nets which are already permitted in the water under the Monkfish FMP. NMFS agrees with the FGS that this exemption will allow fishermen additional opportunities to tend gear, and can reduce gear soak time. NMFS supports the attempt by the FGS to increase its CPUE and authorizes this exemption request. This exemption does not permit the use of additional nets; it only allows nets deployed under existing net limits in the NE Multispecies and Monkfish FMPs, to be hauled more efficiently by vessels dually permitted under both FMPs.

6. Limitation on the Number of Hooks That May Be Fished

The FGS requested an exemption from the number of hooks that a vessel may fish on a given fishing trip, claiming that this measure, which was initially implemented through an interim action (67 FR 50292, August 1, 2002) and made permanent through Amendment 13, was designed to control fishing effort and, therefore, is no longer necessary because the sector is confined to an ACE for each stock, which restricts fishing mortality. Current regulations (§ 648.80) prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or more than 4,500 rigged hooks in the MA RMA. This exemption has been granted to the GB Cod Hook Sector every year since 2004. The potential for gear interactions between protected resources and longline/hook gear is much lower than the interaction potential from bottom trawl or gillnet gear. In addition, the use of longline/hook gear minimizes fishing impacts on benthic habitat. Based on this analysis, NMFS grants this exemption to the FGS for FY 2010.

7. Length and Horsepower Restrictions of the DAS Leasing Program

While Amendment 16 exempts sector vessels from the requirement to use NE multispecies DAS to harvest groundfish, some sector vessels will still need to use NE multispecies DAS under specific circumstances; for example, when fishing for monkfish. Both the SHS and TSS requested an exemption from the DAS Leasing Program length and horsepower restrictions, arguing that sector ACEs eliminate the need to use vessel characteristics to control fishing effort and that removal of this restriction would allow sector vessels more flexibility. NMFS concurs and approves this exemption request. As this exemption was only requested by the SHS and TSS, only these two sectors will be exempt from the DAS Leasing Program length and horsepower restrictions, and thus leasing under this exemption can only occur within and between the SHS and the TSS.

Disapproved Exemption Requests

After completing an initial review of the 17 sector operations plans and contracts submitted September 1, 2009, NMFS provided each sector with comments, including an assessment of which exemption requests NMFS would likely disapprove because of serious concerns with negative environmental impacts that could result from granting the requested exemption. Some of the sectors chose to remove these exemption requests from their operations plans, while other sectors did not. After reconsidering, NMFS included all of these exemption requests of serious concern in the proposed rule and solicited public comment on these requests. Public comment that was received pertaining to these exemptions did not provide any new data or sufficient additional rationale to convince NMFS to change its previous stance on these requests. Therefore, requests for exemption from the GOM Rolling Closure Areas beyond the universal exemption in Amendment 16, the 72-hour observer notification requirement for NMFS-funded at-sea monitoring coverage, the Atlantic halibut one-fish trip limit during the Maine seasonal halibut fishery, the vessel monitoring system (VMS) reporting requirements, the use of electronic vessel trip reports (eVTRs) in replace of paper vessel trip reports (VTRs), the minimum 6-inch (16.51-cm) spacing requirement for de-hookers, and the minimum fish size requirements, are not approved by NMFS for any sectors for FY 2010. These requests and NMFS decision on them are discussed below.

1. GOM Rolling Closure Areas

NFSs II, III, VI, X, XI, XII, and the SHS requested additional exemptions from the GOM Rolling Closure Areas beyond those granted as universal exemptions under Amendment 16. Specifically, sectors requested exemptions from the 30-minute blocks 124, 125, 132, and 133 in April; and block 138 in May. The Council exempted sectors from certain GOM Rolling Closure Areas in Amendment 16, with the exception of areas that the Council believed should remain closed to protect spawning aggregations. The Council tasked the PDT with periodically reviewing and analyzing the existing GOM Rolling Closure Areas to determine which areas should remain closed, but stipulated that sectors may request specific exemptions from the GOM Rolling Closure Areas in their sector operations plans. Subsequently, at its November 2009 meeting, the Council voted to endorse the SHS's request for an exemption to the rolling closure for block 138 in May.

The sectors requesting this exemption argued that, because they are restricted to an ACE for each groundfish stock that caps overall fishing mortality, exemptions to the Rolling Closure Areas should be granted because they are mortality closures. The Rolling Closure Areas were initially implemented in 1998 under FW 25 to the FMP to reduce fishing effort in the "areas of highest cod landings." However, FW 26 referred to the Rolling Closure Areas implemented under FW 25 as "inshore 'cod spawning' closures." The stated purpose and need under FW 26 (section 3.0) states that the Council wanted to "take additional action to protect cod during the 1999 spawning season * * * and immediate action is necessary to reduce catches and protect the spawning stock." As a result, FW 26 expanded the time period of these "cod spawning" closures, which include several of the 30-minute blocks that sectors have now requested exemption from. The final rule implementing FW 26 (64 FR 2601, January 15, 1999) specified that the Council undertook the action because of the "opportunity to delay fishing mortality on mature cod during the spring spawning period, a time when stocks aggregate and are particularly vulnerable to fishing pressure."

These exemption requests fail to consider that, despite ACE limits, direct targeting of spawning aggregations can adversely impact the reproductive potential of a stock as opposed to post-spawning mortality. Northeast Fisheries Science Center's (NEFSC) spring survey data for 2006–2008 indicate that very high concentrations of cod (highest quartile of tows by weight) continue to be present in the April GOM Rolling Closure Area, especially west of 69°30′ W. long., while moderate concentrations of cod are found in block 138. Justification that demonstrates that spawning fish could be avoided was not provided by the individual sectors (*see* comments and response). In addition to protecting spawning fish, the GOM Rolling Closure Areas afford some protection to harbor porpoise and other marine mammals. As a result of these concerns, this exemption request has not been approved.

2. 72-Hour Observer Notification Requirement

Vessels are currently required to call into the Northeast Fisheries Observer Program (NEFOP) 72-hour prior to leaving for a trip into a special management program (§ 648.85). Under Amendment 16, this requirement is expanded to require all groundfish trips to be called into NEFOP in order for NMFS to accurately assign coverage to all vessels; however, NMFS is reducing the observer notification requirement from 72-hour to 48-hour in the final rule implementing Amendment 16. Eight of the 12 NFSs and the FGS requested an exemption from this requirement, claiming that sector vessels should be permitted to hire an at-sea monitor through a private contract arrangement with a NMFS-approved observer company if that company can respond in less time. This request is problematic for several reasons. First, data gathered by NMFS observers is more comprehensive and detailed than data gathered by at-sea monitors, even though those monitors would be acquired through a NMFS-approved observer company. NEFOP observer data is necessary to generate accurate discard estimations for sector vessels. Second, the NEFOP selection protocol for sectors is a robust and consistent sampling scheme which requires all trips to be included in the sampling pool from which trips are selected for observer coverage. Allowing a sector to self-select certain trips for separate sampling undermines the ability for a truly representative sample to be selected. This exemption request would reduce observer data available to NEFOP and potentially introduce bias into the NEFOP monitoring sampling system. Moreover, because of the additional logistical demands imposed on the NEFOP resulting from the increased NMFS-funded at-sea monitoring program for all groundfish vessels, it is necessary that NMFS require a minimum 48-hour notification for all trips. Therefore, this exemption request has not been approved.

3. Halibut One-Fish Trip Limit

The NCCS requested an exemption from the one-fish per trip Atlantic halibut possession limit in order to allow member vessels to participate in the State of Maine's halibut fishery, which has a 50-fish seasonal limit. While the sector argued that the exemption may actually reduce mortality on halibut stocks because the State seasonal limit will be extremely low in FY 2010, possibly only 25 or 30 fish per permitted vessel, the FMP includes a rebuilding program for Atlantic halibut that permits a one-fish per trip possession limit to prevent a targeted fishery while minimizing discards. Federally permitted vessels fishing in the State fishery are currently required to abide by the most restrictive regulations, which in this case is one halibut per trip. Allowing an exemption from the one-fish halibut trip limit specifically to allow sector vessels to participate in a targeted halibut fishery would be inconsistent with the rebuilding program of the FMP. Therefore, this exemption request has not been approved.

4. VMS Requirements

All 12 of the NFSs requested a VMS exemption that would allow a central sector server to relay member vessel catch reports and logbook data to NMFS. The sectors anticipate that, in order to facilitate electronic data transmission from its vessels to a sector-operated data collection and distribution Web portal, an administrative exemption would be necessary to allow the server to relay catch reports and logbook data on behalf of sector member vessels. Under this exemption, catch data would go from the vessel to a central server maintained by the sector, and the sector's server would then relay the data to NMFS.

NMFS' Office of Law Enforcement has raised serious concerns about this exemption request, given that the chain of custody of catch information would be interrupted and, therefore, open to tampering. Until such time that NMFS can ensure that the flow of information under such an exemption is tamper-proof, this type of reporting exemption is not approvable.

Sector vessels may send their data electronically to the sector to facilitate monitoring, but must transmit required reports directly to NMFS.

5. eVTRs

All of the NFSs, as well as the SHS and TSS, requested to use eVTRs in place of paper VTRs for transmitting catch data to NMFS. A pilot study is currently underway that would use eVTRs as well as paper VTRs to determine the viability of eVTRs as a replacement to the paper version. Until the pilot study determines that eVTRs can fulfill all NMFS requirements, this exemption request cannot be granted.

6. Fairlead Roller Spacing on De-hookers

The FGS requested an exemption from the prohibition on the use of de-hookers (crucifiers) with less than 6-inch (15.24-cm) spacing between the fairlead rollers. De-hookers with a spacing of less than 6 inches (15.24 cm) were originally prohibited in a 2002 Secretarial interim rule, and then implemented year-round in 2004 under Amendment 13, to discourage de-hooking strategies that may reduce survival rates of discarded fish. The sector argued that a prohibition on de-hookers requires a modification to longline gear haulers that is inefficient and unnecessary. NMFS believes that reducing the fairlead roller spacing on de-hookers will increase the mortality rates of discarded fish and, therefore, is not consistent with National Standard 9. Based on these concerns, this exemption request has not been approved.

7. Minimum Fish Size Requirements

The FGS and the TSS requested an exemption from the minimum groundfish fish size requirements. The FGS claimed that allowing full retention of all catch would eliminate discards and increase profitability without additional mortality. Further, the sector contended that it should be permitted to land fish less than the current minimum fish size because 100-percent discard mortality is presently assumed by NMFS, and because the sector's ACE would be debited for all discards. The TSS, which requested an exemption from the Federal minimum fish size requirements for American plaice and witch flounder, stated that many of these fish caught by their member vessels are less than 1-inch (2.54 cm) smaller than the current minimum fish size requirements and are already dead when discarded, thus making the requirement of discarding sub-legal fish wasteful.

Granting an exemption from minimum fish sizes would present NMFS with significant enforcement issues by allowing two different fish sizes in the marketplace. Also, NMFS is concerned that this exemption could potentially increase the targeting of juvenile fish. As a result of these concerns, these exemption requests from the minimum fish size requirements have not been approved.

Comments

Thirty-seven comments were submitted on behalf of 12 individuals, the SHS, FGS, NCCS, all 12 NFSs, four fishing industry organizations, two professional organizations, two environmental organizations, the Council, and the Massachusetts Division of Marine Fisheries (DMF). Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are responded to in this rule.

Many comments from individuals, the SHS, NSC, NFS, NCCS, the Associated Fisheries of Maine (AFM), the United National Fishermen's Association (UNFA), and the Association of Professional Observers (APO), questioned various measures in Amendment 16 that apply to sectors. While NMFS understands why these comments were submitted under the proposed rule for sector operations plans, contracts, and allocations, the comments are more applicable to regulations implementing Amendment 16; therefore, comments on the following sector management topics were addressed in the Amendment 16 final rule rather than this rule (Table 4).

TABLE 4—COMMENTS SUBMITTED ON THIS RULE THAT ARE ADDRESSED IN THE AMENDMENT 16 FINAL RULE

Comment topic/issue	Comment number(s) in amendment 16 final rule
Allocation of NE multispecies to sectors	2, 45
eVTRs	25
Sector management measures (generally)	44, 45, 47, 48, 49
Transfer of management authority from NMFS to sector managers	45
Sector operation costs	46
Sector managers computing daily discard rates	53
Sector annual report requirements	55
"Freezing" of catch history	60
Levels of observer coverage	61
Differing roles of at-sea monitors and fishery observers, eligibility standards	63, 64, 65, 66, 67
ACE overages	75
Trading of ACE between sectors	80
Permit banks	87

Sectors and Sector Operations Plans

Comment 1: One individual questioned how sector ACEs would prevent discards. The UNFA inquired whether, if a sector had little allocation of a relatively abundant species, such as redfish, it could reduce that sector's ability to catch other species.

Response 1: A sector is limited to the ACEs it is allocated, as well as any ACE it may acquire through an ACE transfer; and each sector vessel must retain all legal-sized groundfish caught when fishing as a sector vessel. In addition, a discard rate, calculated by NMFS, will be applied to all sector landings and, therefore, sector ACEs. If a sector catches its entire ACE for any stock, it cannot fish in that stock area for the remainder of the FY, unless additional ACE is acquired. For example, if a sector harvests its ACE for GOM cod, it must cease all fishing in the GOM cod stock area, except if using exempted gear or in an exempted fishery. Alternatively, if a sector reaches its ACE for a stock that is found in all stock areas, such as redfish, the sector cannot fish in any area unless and until it acquires additional redfish ACE. These stock areas are detailed in the Amendment 16 final rule. Sectors may acquire additional ACE via an ACE transfer from another sector to resume fishing. Furthermore, sector members can be held jointly and severally liable for illegal discarding or misreporting catch.

Comment 2: The SHS, the NSC, and all 12 NFS disagreed with the requirement that sector managers must increase the frequency for submitting sector reports from weekly to daily once 80 percent of any sector ACE is reached, or when 20 percent or more of the sector's ACE of any stock is harvested for 2 consecutive weeks. The sectors claimed this requirement will unnecessarily increase the administrative burden on sector managers.

Response 2: NMFS is requiring increased reporting when specific thresholds are reached for several reasons. Close monitoring will help prevent a sector from exceeding its ACE, especially after a sector reaches an ACE reporting threshold. Due to the small amount of ACE that some sectors may have for particular stocks, it is possible for a sector to quickly, and unintentionally, reach and exceed an ACE. While it is the sector manager's responsibility to ensure that his or her sector does not exceed its ACE for any stock, it is ultimately NMFS' responsibility to monitor sector catches and prevent overfishing from occurring. Therefore, increased reporting by sectors that meet or exceed these threshold requirements is necessary. An alternative threshold for increasing reporting frequency may be implemented during FY 2010 if agreed to by a sector and NMFS.

Comment 3: The SHS suggested rephrasing a statement in the proposed rule which states that "[s]ector vessels would be required to retain all legal-sized allocated groundfish," to "[s]ector vessels fishing with gear capable of catching ground fish would be required to retain all legal-sized allocated groundfish."

Response 3: The Amendment 16 regulations define a sector trip, with respect to the NE multispecies fishery, as any trip taken by a sector vessel subject to the restrictions and conditions of an approved sector operations plan, in which the vessel declared its intent to fish in the NE multispecies fishery. There is evidence that suggests that some gears considered not capable of catching groundfish (*i.e.,* exempted gear) can, in fact, catch groundfish. While this rule does not contain any regulations, revising Amendment 16 regulations from an inaccurate list of gear-types that are considered incapable of catching groundfish may result in an inaccurate account of groundfish catch. Therefore, all sector trips are required to retain all legal-sized groundfish.

Comment 4: Oceana, referencing section 4.2.3.5.3 of the Amendment 16 Final Environmental Impact Statement (FEIS), which says "Sector operations plans will specify how a sector will monitor its catch to assure that sector catch does not exceed the sector allocation," questioned why the majority of sector operations plans then make reference to following NMFS' instructions in calculating discards. For example, the SHS's operation plan states that, "[m]embers of the Sector agree that discards will be calculated as directed by NMFS, based on 30-percent

at-sea-monitoring conducted by the NMFS."

Response 4: Section 4.2.3.5.3 of Amendment 16 clarifies that "[a]ssumed discard rates will be applied to sectors unless an at-sea monitoring system (such as a sector's independent monitoring program, a Federal monitoring program, or other program that NMFS determines is adequate) provides accurate information for use of actual discard rates." No sector has elected to develop its own at-sea monitoring program; therefore, all sectors will utilize the monitoring program implemented by NMFS. However, two sectors have stated that they may pay monitoring providers for increased at-sea monitoring coverage levels above those required and implemented by NMFS and NEFOP. While all sectors will begin FY 2010 with an assumed discard rate calculated by NMFS, NMFS has developed a monitoring program that will enable it to provide each sector with sector-specific, gear specific, discard rates that will provide more accuracy than an assumed discard rate. Accordingly, NMFS required that each sector operations plan state that the sector will utilize discard rates "as directed by NMFS." Amendment 16 does not require sectors to independently develop their own at-sea catch monitoring system that accounts for discards until FY 2012. This implementation is phased-in so that sectors have time to develop these systems, locate qualified vendors, and have their programs approved by NMFS.

Comment 5: The UNFA questioned how permit holders were expected to make an informed decision on sectors when Amendment 16 measures were not fully approved.

Response 5: Although Amendment 16 measures were not approved until January 21, 2010, NMFS believes ample information and time were provided for eligible NE multispecies permit holders to enroll in a sector for FY 2010. In anticipation that Amendment 16 would be approved, NMFS mailed all limited access NE multispecies permit holders letters dated February 17, 2009, and March 25, 2009, which explained the Council's recommended process for determining a permit's PSC for FY 2010, and notified fishermen of the release of landings data. A letter dated May 1, 2009, was sent to permit holders detailing each permit's PSC for the five different PSC options being considered by the Council for Amendment 16, including the two different allocation baselines the Council was considering. Permit holders also received a letter dated May 14, 2009, that notified them of the timeline for implementation of sectors for FY 2010, explained more about PSCs, and provided them with additional vessel and permit data to help them make an informed decision about whether or not to join a sector for FY 2010.

Amendment 16, which includes new sector regulations and authorization for up to 19 sectors, was approved by the Council on June 25, 2009. Following the Council's approval of FW 44 on November 18, 2009, in which it established NE multispecies ACLs for FY 2010–2012, a second round of permit holder letters, which provided each limited access NE multispecies permit holder with information about their groundfish PSCs, was mailed on December 23, 2009. A proposed rule summarizing sector operations plans, contracts, and allocations was published in the **Federal Register** on December 22, 2009, and the proposed rule for Amendment 16 was published on December 31, 2009. NE multispecies permit holders who could have enrolled in a sector had until January 22, 2010, to commit to a particular sector, and have until April 30, 2010, to opt out of a sector, unless the contract for the sector to which they committed states otherwise. Therefore, NMFS believes that sector participants had ample information and time to make an informed decision on sectors even though the final rule for Amendment 16 had not been published in the **Federal Register**.

Comment 6: The Council expressed concern with the process NMFS used while reviewing exemption requests within sector operations plans and the accompanying EAs. The Council asserted that the review process by NMFS "unilaterally expanded the list of measures from which an exemption cannot be granted" and was inconsistent with the FMP. The Council reiterated that Amendment 16 allows sectors to request additional exemptions to supplement the universal exemptions approved in Amendment 16.

Response 6: As the proposed rule explained, after an initial review of the sector operations plans and EAs, "NMFS provided each sector with comments, including an assessment of which exemption requests NMFS would likely disapprove because of serious concerns with negative environmental impacts that could result from granting the exemption." NMFS initially contacted the sector managers regarding these "exemptions of serious concern" to clarify its apprehension with those particular exemption requests. This initial dialogue provided sector managers an opportunity to either remove the exemption request(s) from their operations plans and EAs, thus reducing their administrative burden, or provide early notice and additional time to gather additional supporting evidence for why the exemption request should be approved by NMFS. Some sectors removed these exemption requests from their operations plans and others did not.

While this early notification was an attempt by NMFS to maintain transparency in its review process, NMFS later recognized that requesting sector managers to alter their operations plans and EAs prior to public review was not necessarily most beneficial to the public. Therefore, NMFS decided to include all legally permissible exemption requests in the proposed rule, except those measures that were also under consideration in Amendment 16 (*i.e.,* the GOM Sink Gillnet Pilot Program). NMFS explained that, if public comment on these exemptions of serious concern provided additional support that convinced NMFS to change its earlier stance on these exemption requests, the sector operations plans and EAs would be revised accordingly. Thus, sectors were provided an opportunity to request additional regulatory exemptions beyond the universal exemptions specified in Amendment 16 and NMFS' decision on these requests are documented in the preamble.

Comment 7: The Council commented that some exemption requests contained no analysis supporting approval or disapproval of the sector exemptions. The Council expressed concern that the public could not provide informed comment on an exemption request that lacks analysis.

Response 7: As explained in the proposed rule, after completing an initial review of 17 sector operations plans and contracts submitted on September 1, 2009, NMFS provided each sector with comments, including an assessment of which exemption requests NMFS would likely disapprove because of serious concerns with negative environmental impacts that could result from granting the exemption. At the request of NMFS, some of the sectors removed these exemption requests from their operations plans, while other sectors did not. After reconsideration, NMFS included all of the exemption requests of serious concern in the proposed rule, and solicited public comment on these requests. While most of the exemption requests that were removed by the sectors lacked any supporting analysis in the EAs, sectors were given until January 27, 2010, to further justify their

exemption requests prior to publication of the final rule.

This deadline was necessary because NMFS needed time to review the final EAs to meet a May 1, 2010 implementation deadline. However, no new analyses were provided during this time or during the public comment period on the proposed rule.

NMFS is aware that the public did not have an opportunity to provide comment for those exemption requests that lacked an accompanying analysis. Had additional analyses been provided by the sector, or if new information had been brought forward from the public in support of such exemption requests during the public comment period, NMFS would have conducted additional analyses and sought further public comment on these exemption requests, consistent with the Administrative Procedure Act (APA).

Comment 8: Prior to publishing the proposed rule, NMFS requested that sectors remove exemption requests that repeated measures already proposed under Amendment 16. One of the requests removed by several sectors pertained to the GOM Sink Gillnet Pilot Program. The GOM Sink Gillnet Pilot Program was subsequently disapproved in Amendment 16. The SHS, the AFM, the NSC, all 12 NFSs, and the Council asked what actions NMFS is considering for exemption requests that were removed from sector operations plans due to consideration in Amendment 16, but which were then disapproved. These sectors argued that, although the measure was disapproved in Amendment 16, sectors should still be able to request an exemption from the regulation.

Response 8: NMFS initially requested that sectors remove exemptions from regulations that were being considered in Amendment 16, to reduce effort duplication. NMFS will work with sector managers regarding reconsideration of this particular exemption request and may approve or disapprove these requests in a future rulemaking. NMFS may solicit additional public comment on granting approved sectors exemption requests to all sectors if additional rulemaking is initiated.

Comment 9: The APO, the UNFA, and one individual, commented that two of the 19 sectors authorized under Amendment 16 neglected to provide the necessary operations plans and EAs, which prevented the public from reviewing these sectors' environmental impacts.

Response 9: While 19 sectors were authorized under Amendment 16, only 17 sectors submitted operations plans to NMFS for FY 2010. The two sectors that did not submit an operations plan or EA to NMFS, the GB Cod Hook Sector and the NFS I, are, therefore, not approved in this final rule.

Comment 10: The Council commented that the operations plan submitted by NFS IV, which proposes to operate as a lease-only sector for FY 2010, is inconsistent with the NFS IV proposal as reviewed and approved for Amendment 16. In addition, the DMF commented that a lease-only sector does not meet the Council's intent for sectors.

Response 10: NMFS contends that all sector proposals submitted to and reviewed by the Council for inclusion in Amendment 16 constituted an initial submission that was offered by the sector as a best estimate of what its membership would resemble. Section 4.3.6 of Amendment 16 says, "[w]hen submitted, most applications were based on the existing sector regulations that were adopted by Amendment 13. Since several Council policies may revise those regulations, some of the applications may be modified." It was understood by the Council that exact membership numbers and details for each sector were subject to change, and that these changes would be made available for public review and comment within the proposed rule for sector operations plans, contracts, and allocations was published. Following the extension of the January 22, 2010, enrollment deadline, many sectors have transformed dramatically from what each sector presented to the Council for consideration in Amendment 16. For instance, in Amendment 16, the SHS predicted its membership to be comprised of "more than 70" permit holders; as of January 22, 2010, there were 129 permits associated with the SHS. Section 4.2.3.2 of Amendment 16 details requirements for a sector, such as providing a list of all vessels that would be part of the sector, including an indication for each vessel of whether it would continue to fish, and a detailed plan for consolidation of ACE, if any is desired, as well as an explanation of the quantity and duration of any redistribution of ACE or DAS within the sector. NFS IV has met these and all other requirements in section 4.2.3.2. Moreover, Amendment 16 does not require a sector to actively engage in fishing operations. In fact, section 4.2.3.7 of Amendment 16 states that "all or a portion of a sector's ACE of any stock can be transferred to another sector." There are currently no regulations that prevent a sector from forming and transferring its entire ACE to another sector.

Lastly, NMFS endorses the transparent approach taken by the NFS IV. For instance, if the NFS IV was not permitted to operate as a lease-only sector, it is likely that the permits within this sector would have simply been scattered among all 12 NFS, making it more difficult to determine the environmental impacts of these permits and to follow the resulting consolidation and potential redirection of effort associated with the permits.

Comment 11: One individual and the UNFA commented that the proposed rule did not address recreational sectors.

Response 11: Under Amendment 16, only limited access NE multispecies permit holders can join a sector. It should be noted, though, that no one from the recreational industry requested that a recreational sector be included as an option in Amendment 16; therefore, the Council did not approve any recreational sectors in Amendment 16.

Comment 12: The UNFA commented that the proposed sector rule is in violation of the Paperwork Reduction Act (PRA) because the sector reporting requirements duplicate existing requirements.

Response 12: This rule does not implement reporting requirements. The sector reporting requirements are established in Amendment 16 and were addressed in the Amendment 16 proposed and final rules consistent with the PRA.

Sector EAs

Comment 13: Oceana commented that fundamental information about the sectors, including sector participants, expected fishing activity, and sector administration by NMFS is vague or non-existent.

Response 13: Each sector EA contains a description of the sector, including numbers of permit holders, active vessels, gear types, geographic areas in which sector members will fish, and a description of the primary ports for the sector's landings. While the EAs were being prepared, NMFS surveyed each sector manager or representative regarding their sector's expected fishing patterns and potential redirection of effort; in all cases the sector managers/representatives responded that current fishing behavior and patterns would not change as a result of operating under sector management in FY 2010. Since sector allocation will be managed closely through mandatory reporting and monitoring requirements, the operations plan for each sector includes a detailed monitoring plan developed in concert with NMFS to which members must adhere.

Comment 14: For FY 2010, 17 sector operations plans, each accompanied by an EA, were included in the proposed rule. Oceana commented that, due to the significant changes that will occur under Amendment 16 and the wide range of sector operations plans, all sector environmental impacts must be incorporated into one single NEPA document that explains, analyzes, and considers alternatives for the management of the groundfish fishery overall.

Response 14: NMFS is not required to prepare one NEPA document for all the sector management alternatives considered for the groundfish fishery. As mentioned in the introductory section of the EAs for each of the 17 sectors, the analysis in each EA tiers off the information and analysis contained in the Amendment 16 FEIS. The Amendment 16 FEIS analyzes measures that achieve the necessary mortality targets, provide opportunities to target healthy stocks, mitigate the economic impacts of the measures, and improve administration of the fishery. In the FEIS, 17 new sectors are authorized and new criteria are set for these sectors, as well as the existing 2 sectors, regarding development of their operations plans. The impacts associated with the specific actions, including regulatory exemptions, of each sector are captured in the individual sector EAs, while the impacts associated with Amendment 16 (the action authorizing the formation of sectors and their general rules and regulations) are more broadly analyzed in the Amendment 16 FEIS. As stated in the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1502.20), "tiering" is encouraged to eliminate repetitive discussions of the same issues and focuses on the actual issues ripe for decision at each level of environmental review. The cumulative impacts of all sectors operating under their allocations or ACE have been considered, and this assessment is found in every sector EA.

Comment 15: Oceana commented that, without a firm binding statement of a sector's enrollment, quota allocation, and its intended plan of operations for FY 2010, the public is left to review an incomplete EA that could change significantly between the end of the current comment period and the beginning of FY 2010. Additionally, Oceana stated that NMFS must require meaningful information as the basis of these important documents and provide for resubmission of NEPA documentation if changes are made to sectors, as currently proposed.

Response 15: The September 1, 2009, rosters represented approximately 95 percent of the groundfish ACLs, which was discussed and analyzed in the cumulative effects assessment of each individual sector EA. Because harvest of 95 percent of the ACLs by sectors was already analyzed in the EAs, any additional individual that decides to join a sector after the September 1, 2009, date would not substantially alter the impacts from what had been analyzed in the draft EAs, unless, as discussed in Section 1 of each EA, additional members triggered specific criteria that may necessitate a supplemental EA (*i.e.,* different fishing behaviors, gears, geographic areas). Furthermore, each of the EAs considered unlimited trading of ACE between sectors, as permitted in Amendment 16, which could increase or decrease an individual sector's ACE. Therefore, impacts associated with any increases or decreases in sector ACEs due to the addition of permits after September 1, 2009, are within the range analyzed in the EAs. As of January 22, 2010, 812 of 1,477 NE multispecies permits, which account for more than 98 percent of groundfish historically landed, had enrolled in a sector.

Comment 16: Oceana commented that, although the sectors have provided preliminary non-binding information about vessels that will operate in each sector, information about gear usage is crude and that accurate and precise information about each sector's fishing plans must be included in each of the sector EA documents before they can be approved.

Response 16: The EAs that were available to the public at the time of the proposed rule were prepared based on the rosters and gear types represented by the member vessels as of September 1, 2009. The EAs have since been revised to analyze the sector rosters and gear types as of January 22, 2010. Although NMFS provided an additional opportunity for sectors to re-open their rosters to allow for new members to enroll or transfer from one sector to another, dramatic change in the composition of each sector's fleet did not occur. As of January 22, 2010, 13 of the 17 sectors will predominantly fish with trawl gear; two will predominantly fish with fixed gear; and one is comprised equally of gillnetters and trawlers. Further, the overall character of the fleet that currently operates under common pool management measures will not change due to the implementation of the FY 2010 sectors. As explained in response 10, sectors stated in their operations plans that fishing behavior and patterns for sector member vessels would not change as a result of operating under sector management. Because sector members have until April 30, 2010, the day prior to the start of FY 2010, to withdraw from their sector and fish in the common pool, the potential make-up of the sectors (*i.e.,* gear usage ratio, number of members) remains subject to change.

Comment 17: Oceana commented that the use of particular gears (for example, bottom trawls) and the effects of fishing on EFH by sector vessels are tersely discussed in many of the EA documents that support each sector. Oceana further asserted that, despite boilerplate findings in these EAs that demonstrate significant impacts of bottom-tending mobile gears on EFH, there is no discussion or exploration of alternatives to these gears. Finally, Oceana claimed that failing to complete a robust analysis of gear usage and fully explore alternatives, including requiring other gears to be used to prosecute the fishery, violates NEPA.

Response 17: The purpose and need of these EAs, as required by Amendment 16, was to assess impacts of each sector's operations plan. Significant impacts to EFH by fishing gears for sector vessels were discussed in the Amendment 16 FEIS and are not repeated in these EAs. Use of bottom-tending mobile gear by fishermen would have the same impact to habitat, whether vessels were operating under the Amendment 16 common pool rules or under the harvest rules specified in the sector operations plan, because the overall mortality limits constraining effort are the same for the management options.

Comment 18: Oceana commented that section 4.1.4 of the sector EAs, which consists of documents prepared by Entrix, Inc. ["Gear Types and Interaction with Habitat"] seem to be virtually identical, and the discussion of a specific sector's effects on EFH is inadequate.

Response 18: According to CEQ regulations (40 CFR 1502.15), the Affected Environment section of an EA must describe the environment of the area(s) to be affected by the alternatives under consideration, and the description should be no longer than is necessary to understand the effects of the alternatives. In compliance with CEQ regulations, the Affected Environment section in the sector EAs (section 4) is a description of the valued ecosystem components (VECs); physical environment (including EFH); the allocated target species; the non-allocated target and bycatch species; protected resources; and the human communities, including the social and economic environment. Section 5 of

each sector EA, "Impacts of the Proposed Action and Alternatives" discusses sector-specific impacts on EFH and other VECs ecosystem components. Since the composition of gear used by the fleet is not changing as a result of the formation of sectors, overall impacts to habitat and EFH are expected to be no different than under current management measures.

Exemption Requests

120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels

Comment 19: The AFM, NSC, FGS, SHS, each NFS, Council, DMF, Environmental Defense Fund (EDF), Cape Cod Commercial Hook Fishermen's Association (CCCHFA), and four individuals commented in support of the exemption request from the 120-day block requirement out of the fishery for Day gillnet vessels. They stated that this regulation is an effort control that is no longer necessary in a fishery managed under an ACE, and that FY 2010 allocations make this effort control unnecessary. The AFM, SHS, and one individual pointed out that this exemption would reduce the administrative burden on sectors. Addressing NMFS' concern about possible untended and/or ghost gear that could result from granting this exemption request, the Council and three individuals commented that efforts by fishermen to prevent gear loss and maintain product quality would prevent gear from being tended less often.

Response 19: NMFS agrees with these comments and has approved this exemption request for FY 2010.

Comment 20: The Council commented that the 120-day block requirement out of the fishery for Day gillnet vessels was not approved in Amendment 7, as stated in the sector proposed rule, but rather was adopted in FW 20 (62 FR 15382; April 1, 1997) to make the effort control program more effective for Day gillnet vessels.

Response 20: NMFS agrees and has acknowledged this error in the preamble to this final rule.

Comment 21: The Council disagrees that exemption from the 120-day block requirement out of the fishery for Day gillnet vessels could lead to an increase in gear days, and the DMF commented that the concerns expressed by NMFS in the proposed rule are inconsistent with the "philosophy that sectors will fish in a way to characterize themselves as stewards of the resource."

Response 21: In the proposed rule, NMFS stated, "if some vessels are not selective and/or if they catch less fish, CPUE could decrease and more fixed gear could be deployed." Although it is unclear what affect sector vessels may have on CPUE, NMFS agrees with the commenters that CPUE will most likely increase, and has approved the exemption requests from the 120-day block requirement out of the fishery for Day gillnet vessels.

Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

Comment 22: The NSC, and the 12 NFS it supports, commented that NFS III and XI requested an exemption from the prohibition on a vessel hauling another vessel's gillnet gear to offset NMFS' concerns regarding potential increases in CPUE from exempting the 120-day block requirement out of the fishery for Day gillnet vessels. DMF, EDF, and the FGS commented in support of these sectors' request for the purpose of increasing harvest flexibility through the use of community fixed gear.

Response 22: NMFS endorses the efforts by the NFSs III and XI to improve CPUE and reduce gear days and has approved their request for an exemption from the prohibition on a vessel hauling another vessel's gillnet gear.

20-Day Spawning Block Requirement Out of the Fishery

Comment 23: The AFM, SHS, and six individuals supporting those sectors' exemption requests from the 20-day spawning block requirement out of the fishery, said that this regulation is an effort control no longer necessary in a fishery managed under an ACE, that reduced allocations for FY 2010 make this effort control unnecessary, and that this exemption would reduce the administrative burden on sectors. The AFM, SHS, EDF, the Council, and five individuals commented that the 20-day spawning block does not cover all peak spawning times, that the benefits of this regulation are unclear, and that this measure is therefore ineffective. The Council further commented that the 20-day spawning block was developed without any analysis on spawning stocks, and DMF supported the exemption request provided that each sector included a detailed strategy for avoiding pre-spawning and spawning stocks. One individual suggested fishermen are less likely to target spawning stocks since market prices are lower for spawning fish. The NCCS opposed this exemption request, claiming this measure set a precedent for the protection of spawning fish.

Response 23: NMFS agrees with these comments and has approved this exemption request from the 20-day spawning block for FY 2010. While NMFS supports the protection of spawning stocks, prohibiting vessels from fishing 20 days within a 3-month spawning period will likely provide minimal benefit to the stocks.

Limitation on the Number of Gillnets Imposed on Day Gillnet Vessels

Comment 24: The AFM, SHS, EDF, and four individuals supported easing the limitation on the number of gillnets for Day gillnet vessels to 150 nets in each of the RMAs. These commenters stated that this regulation is an effort control no longer necessary in a fishery managed under an ACE, and that reduced allocations for FY 2010 make this effort control unnecessary. The FGS supported this exemption because it would provide increased flexibility for fishermen while minimizing environmental impacts.

Response 24: NMFS agrees with these comments and has approved the SHS's request for exemption from the limitation on the number of gillnets for Day gillnet vessels in the SHS sector (not to exceed 150 gillnets).

Comment 25: Comments by the AFM and four individuals argued that NMFS' Protected Resources Division extrapolates takes of marine mammals based on the amount of fish caught in gillnets, not by the number of gillnets in the water.

Response 25: Estimating the number of takes of marine mammals is not equivalent to predicting potential fixed gear interactions with protected resources. The proposed rule explained that protected resources could be "negatively impacted by an increase in gear days and more fishing effort," as well as "spatial and temporal changes in fixed gear location and how these changes interact with protected species." NMFS believes that, while an increase in the number of gillnets could increase gear interactions with protected species, simply changing where and when the gear is used could also have a negative (or positive) impact on protected resources. Nonetheless, granting this exemption will likely increase CPUE and reduce gear interaction with protected resources, and therefore, it has been approved.

Comment 26: Comments by the AFM and four individuals contended that NMFS incorrectly stated that nets in the water will increase in the GB and SNE RMAs, as gillnet vessels can already fish 150 monkfish nets in those areas.

Response 26: Gillnet restrictions for vessels with Category C, D, F, G, and H monkfish permits that also possess a limited access NE multispecies permit (§ 648.92(b)(8)(i)(B)), do in fact allow

vessels fishing under a monkfish DAS to fish with, haul, or possess, any combination of monkfish, roundfish, and flatfish nets, up to 150 total gillnets. However, current groundfish gear restrictions in the groundfish RMAs restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the SNE and MA RMAs (§§ 648.80(b)(2)(iv) and 648.80(c)(2)(v), respectively). Thus, not all NE multispecies vessels (vessels without a Category C, D, F, G, or H monkfish permit) are able to fish 150 nets in those areas.

Comment 27: The AFM commented that gillnet vessel owners should be allowed to change their annual designation as Day or Trip gillnet vessel for FY 2010 once NMFS has decided on the fate of this exemption request.

Response 27: Consistent with current policy, gillnet vessels may change their designation as either a Day or Trip gillnet vessel within 45 days of permit issuance, provided the vessel has not yet fished in the FY. This final rule, therefore, provides opportunity for sector vessels to change their gillnet designation prior to the start of FY 2010.

Comment 28: The DMF opposed granting an exemption from regulations limiting the number of gillnets for Day gillnet vessels due to a lack of "meaningful" at-sea sampling coverage for sectors until FY 2012. DMF expressed concern that gillnets generate a large amount of bycatch, which could result in unrecorded discards as SHS vessels attempt to prevent ACEs from being exceeded.

Response 28: When the Council adopted Amendment 16, the Council neither selected the option to require 100-percent observer coverage, nor required sectors or the common pool to be subject to an at-sea monitoring program in FY 2010. However, NMFS agrees with the basic concept advocated by DMF that higher levels of observer coverage are more effective at collecting the data necessary to monitor groundfish landings and discards under Amendment 16. NMFS has funding to provide approximately 38-percent at-sea monitoring coverage for sector vessels, in addition to fully funding 50-percent dockside monitoring coverage for FY 2010. This is a significant increase in current at-sea monitoring levels, and dockside monitoring is entirely new. Such coverage levels should provide sufficient information to more than meet the minimum requirements of the Standard Bycatch Reporting Methodology (SBRM), while providing additional coverage to monitor sector operations under Amendment 16. Distribution of such funds was intended to accomplish the dual goal of monitoring both at-sea catch and dockside landings to ensure that discards are accurately estimated and landings data are validated.

Comment 29: One individual stated that permitting the SHS to fish up to 150 gillnets in any of the Rolling Closure Areas was an inequitable advantage for the sector over common pool vessels, and that it would have a detrimental effect on other fisheries.

Response 29: All limited access NE multispecies permit holders have been provided the opportunity to enroll in a sector. Sector vessels have been granted exemptions from several regulations that common pool vessels are still required to follow because each sector voluntarily accepted increased responsibilities in exchange for an ACE to limit its catch. NMFS believes that requiring sectors to retain all legal-sized groundfish and to deduct all non-exempted catch (both landings and discards) from its ACE will increase the accountability of sector vessels and will reduce the impact from groundfish vessels on other fisheries.

Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

Comment 30: The DMF, EDF, CCCHFA, and FGS, commented in support of exempting FGS vessels from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS.

Response 30: NMFS believes this exemption will enhance fishing vessel flexibility and improve CPUE while reducing the environmental impact of fishing and, therefore, has approved this exemption request.

Limitation on the Number of Hooks That May Be Fished

Comment 31: The CCCHFA and FGS both supported the FGS' exemption request from the limit on the number of hooks that may be fished. DMF also endorsed this request, provided the sector offers rationale for why the exemption is necessary, includes details on what their maximum hook limit would be, and provides a strategy for avoiding pre-spawning and spawning stocks.

Response 31: NMFS encourages the use of fishing gear that results in minimal environmental impact and believes that the FGS provided adequate rationale for their hook gear exemption request in their operations plan and EA. NMFS does not believe it is necessary for the FGS to detail how many hooks will be used, but encourages the FGS to develop a strategy for avoiding spawning stocks.

Length and Horsepower Restrictions on DAS Leasing

Comment 32: EDF, AFM, and five individuals commented in support of exemption requests made by the SHS and TSS from the length and horsepower restrictions on DAS leasing. EDF and one individual stated that there was no need for such an effort control while the sectors are restricted to an ACE. Three other individuals and AFM claimed that monkfish bycatch would be better accounted for as a result of this exemption. An additional individual commented that DAS and quotas would remain intertwined until a comprehensive plan is completed, and this exemption will ease the transition.

Response 32: NMFS agrees that restricting a sector to its ACE reduces the need for DAS leasing restrictions and concurs that granting this exemption will ease the transition for limited access monkfish and NE multispecies limited access permitted vessels into sectors and catch share management. Additional horsepower could allow a vessel to catch more fish in less time with less of an impact on the environment. Because vessel replacements will continue to be restricted by length overall and horsepower limits, this exemption is not expected to change the character of the fleet. Although an exemption from HP restrictions could allow a vessel to catch fish more quickly, NMFS disagrees that this exemption would result in improved accounting of bycatch. This exemption would enable SHS and TSS permitted vessels to better match their groundfish DAS with monkfish DAS and fish groundfish DAS and monkfish DAS simultaneously. This would allow for sector vessels to retain more monkfish and groundfish, increase vessel profits, and reduce regulatory discards.

Comment 33: Three individuals commented in opposition to the exemption from DAS and horsepower leasing restrictions. Two of these individuals were concerned about a re-direction of effort toward the monkfish and skate fisheries, and the third individual commented that, because DAS is the primary mortality control for monkfish, these regulations should remain.

Response 33: NMFS surveyed the sectors' expected fishing patterns and potential redirection of effort for FY 2010, and, in all cases, the sectors

responded that current fishing behavior and patterns would not change as a result of operating under sector management. Further, monkfish mortality controls in the Monkfish FMP are not based on groundfish DAS. Sector vessels are still required to use a monkfish DAS when targeting monkfish.

Comment 34: DMF questioned whether DAS that otherwise would have been used by sector vessels for groundfish fishing could now be leased to sector vessels targeting monkfish.

Response 34: Since sector vessels are no longer subject to groundfish DAS, sector vessels that do not plan to harvest more than the incidental catch limit of monkfish could lease their groundfish DAS to another sector vessel that intends to target monkfish. Sector vessels fishing on a sector trip for monkfish, or any other non-groundfish fishery that is not exempted (*e.g.,* skates), are required to use a groundfish DAS. However, the monkfish FMP mortality controls are not based on groundfish DAS, so this provision would not compromise the ability of the monkfish FMP to meet its mortality targets.

Exemption Requests That Were Not Approved

GOM Rolling Closure Areas

Comment 35: NSC, AFM and one individual asserted that the GOM Rolling Closure Areas were not designed to protect spawning fish. NSC argued that it was therefore inappropriate to reject such a request based on ancillary benefits that Rolling Closure Areas may provide to spawning fish and marine mammals. AFM, SHS, and one individual specified that the Rolling Closure Areas were no longer necessary for mortality control since sectors would be limited to their ACEs. Conversely, EDF commented that ancillary benefits may be sufficient justification for denying exemption requests. DMF, CCCHFA, and NCCS commented that protection of spawning fish was a part of the Rolling Closure Areas, while CCCHFA and FGS specifically commented that spawning fish require additional protections.

The SHS argued in their EA that fishing methods and areas fished would not result in additional interactions between gear and protected resources. The six NFSs that requested exemption from 30-minute blocks 124, 125, 132, and 133 in April contended in their operations plans and contracts that their members' knowledge would enable them to avoid spawning aggregations of fish and that not granting their request could prematurely end commercial access to haddock in those areas. The NFSs provided a strategy to minimize the impacts to spawning fish while promoting benefits to sector members.

Response 35: NMFS agrees that the Rolling Closure Areas were implemented to protect spawning fish. Although FW 25 to the FMP initially implemented the closures to protect groundfish stocks in 1998, FW 26 identified and enhanced these areas, which were referred to as "cod spawning" closures. The final rule implementing FW 26 specified that the Council undertook the action because of the "opportunity to delay fishing mortality on mature cod during the spring spawning period, a time when stocks aggregate and are particularly vulnerable to fishing pressure." Based on this information, NMFS is reluctant at this time to grant further exemptions to the GOM Rolling Closure Areas beyond the universal exemptions approved in Amendment 16, and has, therefore, not approved the sectors' additional GOM Rolling Closure Area exemption requests.

Comment 36: The Council, AFM, SHS and two individuals commented that the "Council endorses requests made by sectors that they be exempt from the rolling closure block 138 in May." SHS, AFM and one individual stated that block 138 is the only block closed east of 70° W. long. and is particularly important to Maine and New Hampshire vessels that fish close to shore. One individual commented that exemption from block 138 would reduce an administrative burden placed on vessels and another individual supports this exemption in order to give vessels additional flexibility.

Response 36: NMFS acknowledges the Council's endorsement of sectors' right to request additional exemptions from Rolling Closure Areas and, therefore, solicited comment on these requested exemptions. However, NMFS has disapproved the request for an exemption from block 138 for the reasons set forth in the preamble: These exemption requests fail to consider that direct targeting of spawning aggregations can adversely impact the reproductive potential of a stock as opposed to post-spawning mortality; NEFSC spring survey data for 2006–2008 indicate that very high concentrations of cod (highest quartile of tows by weight) continue to be present in the April GOM Rolling Closure Area, especially west of 69°30′ W. long., while moderate concentrations of cod are found in block 138; justification that demonstrates that spawning fish could be avoided was not provided by the individual sectors (*see* comments and response); and the GOM Rolling Closure Areas also afford some protection to harbor porpoise and other marine mammals. As a result of these concerns, this exemption request was not approved.

Comment 37: The NSC commented that in an attempt to offset potential effort on spawning stocks that could result from an exemption from blocks 124, 125, 132, and 133 in April, NFSs did not request exemption from the 20-day spawning block that is required by all vessels. These NFS sectors also offered to limit the percentage of their cod allocations that could be taken during April to further address any common pool inequities.

Response 37: NMFS acknowledges that the NFSs' operations plans included strategies to mitigate potential adverse impacts of additional exemptions from the Rolling Closure Areas. However, NMFS has disapproved the request for an exemption from 30-minute blocks 124, 125, 132, and 133 in April because the rationale provided was insufficient for the reasons explained earlier in the preamble and above under Response 37.

Comment 38: NSC requested that NMFS not defer approval of additional Rolling Closure Area exemptions until analyzed by the Council's PDT, since there has been a lack of data since the areas closed in 1998 under FW 25.

Response 38: NMFS disagrees that there is a lack of data and has used data from the NEFSC's annual spring bottom trawl surveys in evaluating these exemptions. Data from 2006 through 2008 demonstrate that many of the highest catches of Atlantic cod occur in most of the 30-minute blocks from which sectors have requested exemptions. NEFSC reviewed the exemptions requests and have raised concerns that granting exemptions from blocks 124, 125, 132, and 133 in April would have severe negative impacts on spawning fish, while granting an exemption from block 138 in May would have a moderate negative impact on spawning fish.

Comment 39: DMF commented that NMFS should not approve any additional exemptions from GOM Rolling Closure Areas until sectors have operated for at least 1 year.

Response 39: NMFS acknowledges this comment and points out that additional exemption requests from the GOM Rolling Closure Areas have not been granted for FY 2010.

72-Hour Observer Notification Requirement

Comment 40: The NSC and all 12 NFSs support an exemption from the 72-hour observer notification requirement. EDF argued that, while the full suite of data collected by NEFOP is valuable, the primary monitoring goal of catch shares is tracking catch. EDF opined that, if a sector can hire an approved third-party at-sea monitor, they should be freed from the constraints of the NEFOP program. However, EDF also proposed setting a cap on how many trips could be exempted from NEFOP, to ensure NEFOP goals are not undermined. The FGS commented that the NEFOP notice requirement of 72 hour disproportionately impacts day boats, which cannot accurately forecast trips 3 days in advance and, therefore, are generally excluded from fisheries requiring such notice. DMF opposes the exemption, concurring with NMFS' rationale in the proposed rule.

Response 40: NMFS disagrees with EDF's assertion. A catch-share based fishery increases the importance of timely and accurate discard monitoring as well as landings. NMFS' intent in implementing additional at-sea monitoring (30-percent of trips, in addition to existing NEFOP coverage for sector vessels) is to track catch (landings and discards). In order to properly select trips for observer coverage and at-sea monitoring coverage, NEFOP must be notified of all trips.

NMFS also disagrees with FGS' assertion that day boats are prevented from participating because of the NEFOP notice requirement. Day vessels are currently allowed to notify NEFOP of all possible trips for a week at a time with no penalty for canceling trips. This allows day vessels to make decisions on a daily basis without undermining trip selection by NEFOP. This provision remains unchanged for sector dayboat vessels for FY 2010. Further, NMFS has reduced the requirement from 72- to 48-hour for all groundfish vessels in the final rule implementing Amendment 16 to ease the burden on vessels.

Halibut One-Fish Trip Limit

Comment 41: NCCS, the only sector to request exemption from the halibut one-fish trip limit, commented that halibut is showing a recovery in eastern Maine and that Maine's State fishery for Atlantic halibut provides valuable stock information. The NCCS also stated that allowing vessels to participate in the Maine State fishery would keep mortality of Atlantic halibut consistent with current fishing practices. EDF commented in support of the exemption request, asserting that Canadian data shows a more robust Atlantic halibut population in Canadian waters than assessments focused on U.S. waters suggest. Conversely, the Council disagreed with allowing an exemption from the one-fish halibut provision, noting that Amendment 16 requires a 27-percent reduction in Atlantic halibut mortality and that this exemption request is inconsistent with the rebuilding plan in Amendment 16.

Response 41: NMFS agrees with the Council's comment that Atlantic halibut still requires a substantial mortality reduction. NMFS agrees with the Council that maintaining current mortality rules for Atlantic halibut would be inconsistent with the rebuilding program, and has therefore disapproved this exemption request. Furthermore, NMFS disagrees with NCCS that this exemption would maintain current Atlantic halibut mortality levels because the NCCS vessels are currently prohibited from participating in the Maine State fishery.

Comment 42: NCCS argued that adopting the State fishery's restrictive annual limit could result in lower total halibut landings. The Council commented that it is unclear how fishing under State limits would affect Atlantic halibut mortality.

Response 42: NMFS disagrees with this comment by the NCCS. All Federally permitted vessels are currently prohibited from targeting Atlantic halibut. Maine, however, allows a fishery for State-only permitted vessels to target Atlantic halibut, with the result that participating vessels change their operations with the express goal of increasing their catch of Atlantic halibut. The one-fish trip limit for Atlantic halibut in the Federal rebuilding program prevents a targeted fishery while reducing discard of bycatch.

VMS Requirements

Comment 43: NSC and 12 NFSs argued for the ability to utilize a central sector server to relay member vessel catch reports and logbook data to NMFS, commenting that they began development of a NFS sector data system prior to NMFS hosting workshops on sector monitoring, that the NFS is dependent on their integrated systems, and that NMFS should immediately adopt electronic signature technology, currently in use by financial and high-technology industries, which the NFS sectors are prepared to deploy. DMF opposed this exemption, based on NMFS' rationale that these data would not be tamper-proof.

Response 43: NMFS acknowledges that NSC initiated software development prior to the first workshop NMFS held in June 2009, but disagrees that this is sufficient sole rationale for NMFS to approve the NFSs exemption request from NMFS' VMS requirements. The NSC has not yet responded to NMFS' request for an electronic signature proposal to review. Electronic signatures are one aspect of the NMFS-sponsored eVTR pilot study (discussed in more detail below) currently underway as a means to evaluate exemptions that would facilitate electronic exchange of data between sector vessels, sector managers, and NMFS.

Comment 44: The Council commented that a VMS exemption request appears inconsistent with the Amendment 16 measures prohibiting sectors from requesting exemptions from reporting requirements.

Response 44: NMFS disagrees, as this exemption request is not from the reporting requirement, but from the specified method for meeting the reporting requirement. Still, the exemption request from VMS reporting requirements was not approved.

Comment 45: EDF commented that real-time reporting is critical and this exemption would facilitate timely reporting.

Response 45: NMFS agrees that real-time reporting is critical and believes that this exemption and others like it could be granted once the pilot study that is currently under way determines a method that fulfills all necessary requirements mandated by NMFS.

eVTRs

Comment 46: DMF asserted that an exemption from paper VTRs should not be granted until the viability of eVTRs as a replacement for paper VTRs is tested.

Response 46: NMFS agrees and has initiated a pilot study to test the feasibility of using eVTRs to fulfill all paper VTR requirements.

Comment 47: CCCHFA and FGS referred to previous eVTR pilot studies in the Northeast and urged NMFS to use these as a basis to approve this exemption for FY 2010. EDF asserted that eVTR tests in other regions appear to document eVTRs as successful.

Response 47: NMFS acknowledges that some eVTR testing has previously occurred in the Northeast region, but disagrees this is sufficient basis for approving eVTRs at this time. Previous studies did not comprehensively study the use of multiple systems or the use

of eVTRs to meet all requirements of paper VTRs. Remaining unresolved issues with approving eVTRs will be tested in the pilot study mentioned above.

Comment 48: FGS asserted that paper-based reporting results in delayed analysis and promotes "failing" management policies. EDF further asserted that the paper system has inherent flaws, including time lags and the opportunity for human error. NSC, the 12 NFSs, and CCCHFA urged NMFS to approve eVTRs as quickly as possible.

Response 48: NMFS disagrees that paper-based reporting systems promote failing management policies. However, NMFS does agree that eVTRs should be approved as quickly as possible if they are shown to fulfill all paper VTR requirements.

Comment 49: NSC and all 12 NFSs commented that the proposed use of paper VTRs by sector managers for ACE monitoring is an unachievable requirement that will drain the limited time and resources of fishermen and sectors. NSC also pointed out that disapproval of an exemption from paper VTRs fails to recognize that NMFS must wait for paper VTRs to accomplish catch monitoring while the private sector is expected to accomplish the task in 36 hours.

Response 49: NMFS disagrees that the use of paper VTRs establishes an unachievable requirement for sectors. Sector members are required to provide copies of their VTRs to the sector manager within 24 hours of the end of each trip. Each reporting week ends on Saturday and sector weekly reports are due to NMFS by 23:59 of the following Thursday. Therefore, sector managers will have a minimum of 96 hours to incorporate data from paper VTRs in their weekly report to NMFS. This information will provide NMFS with more real-time monitoring information.

Comment 50: NSC and all 12 NFSs stated that it is inconsistent for NMFS to deny an exemption to use eVTRs until tested while implementing a requirement for trip end hails that will use the same VMS technology.

Response 50: NMFS is not implementing a requirement for either trip start or trip end hails to be sent via VMS. The Dockside Monitoring Standards require that the transmission of all vessel hails be either as an e-mail via VMS, or some other electronic method, as determined by the sector. This standard was specifically set to allow sectors to choose and develop any electronic means for transmitting hails. At the request of multiple sectors, NMFS has added trip start hail and trip end hail forms to VMS for use by any sector that elects to use them. Further, to mitigate the risk of any electronic hail system failure, the Dockside Monitoring Standards also stipulate that "if the vessel does not receive confirmation within 10 minutes, the captain must contact the vendor to confirm the trip start hail via an independent backup system (*e.g.,* a phone number) that must be set up by the DSM vendor." The 10-minute window applies to trip start hails to minimize the time a vessel must delay departing on a trip due to a failure of the primary hail transmission method selected by the sector. The 10-minute window does not apply to trip end hails in acknowledgement that vessels may have limited communication capabilities at sea and that vessels should not be forced to delay their return to port due to a failure of the primary hail transmission method selected by the sector. However, no vessel may unload its catch until it is either met by a dockside monitor or issued a waiver from dockside monitoring.

Fairlead Roller Spacing on De-Hookers

Comment 51: DMF submitted a comment supporting NMFS' stated rationale for denying this exemption.

Response 51: NMFS agrees and has denied this exemption request.

Minimum Fish Size Requirements

Comment 52: DMF opposed an exemption from the minimum fish size requirements based on NMFS' concerns pertaining to enforceability and the potential to target juvenile fish. EDF also commented, stating that this exemption may result in increased targeting of juveniles with a negative impact on spawning. The Council commented that this exemption could lead to a change in size selectivity that could lead to an increase in mortality for a given weight or age-class of fish which could invalidate the projections used to determine ABCs and ACLs.

Response 52: NMFS agrees and has denied this exemption request.

Comment 53: EDF commented that granting this exemption may reduce discards of dead and dying fish.

Response 53: NMFS agrees, but has denied this exemption based on the enforcement issues and risks to juvenile fish stated above.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Because this final rule contains no implementing regulations, it is exempt from review under Executive Order (E.O.) 12866.

Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in effectiveness of this rule. Publication of this rule is conditional upon approval and publication of the final rule for Amendment 16. These rules also must be in effect at the beginning of FY 2010 on May 1, 2010, to fully capture their environmental and economic benefits. However, the time available for this rulemaking and for Amendment 16 was constrained by multiple factors, including the development of Amendment 16 and Framework 44, data availability, and the scheduling of U.S. and international management bodies, which delayed this rulemaking. Due to these constraints, the rulemaking could not be completed further in advance of May 1, 2010, and in order to have this action effective at the beginning of FY 2010, it is necessary to waive the 30-day delay period for this rule.

This waiver is necessary and in the public interest. This rule relieves several restrictions for the NE multispecies fishery in order to help mitigate the adverse economic impacts resulting from continued efforts to end overfishing and rebuild overfished stocks in Amendment 16, and increases the economic efficiency of vessel operations through the authorization of 17 new sector operations plans for FY 2010. Failure to waive the 30-day delay in effectiveness could result in short-term adverse economic impacts to NE multispecies vessels and associated fishing communities, as well as to the fish stocks subject to this rule. Without this rule, vessels that have signed up to join a sector in FY 2010 (812 vessels, 55% of the groundfish fleet) would not be able to take advantage of the flexibility in vessel operations this rule implements. For example, sector vessels would receive exemptions from trip limits, DAS, and seasonal closure areas that this rule allows. Moreover, because vessels committed to a sector may not fish in both the common pool and a sector in the same FY, vessels currently signed into a sector would be forced to cease fishing operations entirely during the delay in effectiveness, or forego sector membership for the entire FY, thereby losing the mitigating economic efficiencies of the restrictions relieved for sector vessels. This would also

reduce the economic efficiency of the majority of the fleet until such measures become effective, and cause unnecessary adverse economic impacts to affected vessels. Moreover, this rule, along with Amendment 16 and FW 44, is intended to end overfishing of various stocks in the Northeast and to assist in the rebuilding of overfished stocks. Without these rules, several stocks are likely to continue to experience overfishing, and rebuilding of stocks, as required by the Magnuson-Stevens Act, would likely be compromised. This would be contrary to not only the interest of the fishing communities, but to the public at large, as overfishing and overfished stocks decreases the ability of the public to enjoy that stock for recreational, aesthetic, or other reasons, and reduces the availability of seafood. Therefore, delayed implementation of these measures beyond May 1, 2010, is contrary to the public interest, and the requirement to delay implementation of this rule for a period of 30 days is hereby waived.

A Final Regulatory Flexibility Analysis (FRFA) was prepared for both this rule and the Amendment 16 final rule, as required by section 604 of the Regulatory Flexibility Act (RFA). The FRFA is comprised of the economic impacts identified in the Initial Regulatory Flexibility Analysis (IRFA), which was summarized in the preamble of the proposed rule, the corresponding analyses in the EAs prepared for this action, and the discussions, including responses to public comments included in this rule. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EAs prepared for this action and, thus, are not repeated here.

Summary of the Issues Raised by Public Comments in Response to the IRFA

DMF commented that the IRFA did not include specific information detailing Federal subsidies for administrative costs, such as those for sector formation or potential costs to sectors for dockside and at-sea monitoring. DMF suggested that providing additional information on Federal funds that have been devoted to sector implementation could help the public understand why many fishermen would prefer to enroll in a sector opposed to fishing in the common pool.

A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

This FRFA details funds set towards sector implementation. NMFS spent $490,000 on an environmental services contractor to assist in drafting the sector EAs and to conduct NEPA analysis for each sector. In past years, this cost has been borne by each sector. NMFS has funded the estimated full cost of the first year of dockside monitoring, via a $1.2 million grant awarded to the GOM Research Institute (GMRI). NMFS has distributed the $490,000 of funds among the sectors to cover start-up and management costs. A portion of this amount was awarded to GMRI, which administered sub-awards to each of the sectors. In addition, NMFS awarded a grant worth $230,000 to the State of Maine, which is making sub-awards to Maine-based sectors to cover start-up and operating costs. Lastly, NMFS, at considerable cost, is providing a four-fold increase in the level of at-sea monitoring for sector vessels.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

This action will affect regulated entities engaged in commercial fishing for groundfish that have elected to join one of the 17 sectors that have submitted operations plans and been approved for FY 2010. Any limited access Federal permit under the FMP is eligible to join a sector (Table 4). The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is $4 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million annually. Since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. As of January 22, 2010, a total of 812 of 1,477 eligible NE multispecies permits indicated their intent to join a sector. Table 1 presents a summary of the number and percent of individual and active permits enrolled in a sector for FY 2010 as of January 22, 2010. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2010, the number of permits participating in sectors on May 1, 2010, and the resulting sector ACE allocations, may be reduced.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Action

This rule contains no collection-of-information requirement subject to the PRA.

Description of Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Joining a sector is voluntary. This means that a permit holder's decision of whether to join a sector will be based on the option that is expected to offer the greater economic advantage—*i.e.,* joining a sector or fishing under effort controls in the common pool. Since sectors are granted certain universal exemptions, and all sectors may request and be granted additional exemptions from regulatory measures that apply to common pool vessels, sector vessels are afforded greater flexibility than common pool vessels. Sector members no longer have groundfish catch limited by DAS allocations and are, instead, limited by their available ACE. In this manner the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips.

Unlike common pool vessels, sectors collectively bear the administrative costs associated with preparing an EA, as well as the costs associated with sector management, dockside monitoring, and at-sea monitoring. The magnitude of the administrative costs for sector formation and operation is estimated to range from $60,000 to $150,000 per sector, and the potential cost for dockside and at-sea monitoring ranges from $13,500 to $17,800 per vessel. These estimates illustrate the fact that the potential administrative costs associated with joining a sector could have influenced a permit holder's decision on committing to a sector. The majority of these administrative costs are subsidized by NMFS for FY 2010. Whether these subsidies, which include providing financial support for preparation of sector EAs, dockside monitoring, and at-sea monitoring, will continue beyond FY 2010 is not known. Nevertheless, these subsidies may make joining a sector a more attractive economic alternative for FY 2010.

The substantial changes affecting vessels that choose to join a sector make

it difficult to assess the economic impact on these fishing businesses. The only sector that has been operating since a sector allocation was first authorized in 2004 is the GB Cod Hook Sector. The average revenue per sector member increased from $61,000 in FY 2004 to $112,000 in FY 2008. Comparative analysis of vessels using similar gear that did not join a sector suggests that vessels that joined the GB Cod Hook Sector were more technically efficient. Whether this difference in efficiency was because of the flexibility associated with regulatory exemptions, or due to a self-selection effect is unknown. Nevertheless, available information suggests that economic performance among sector vessels may be expected to improve relative to common pool vessels that remain under effort controls.

Small entity impacts may differ depending on sector-specific operations plans. The number of permits that have enrolled in each sector, as well as the operating characteristics of the sector, may have an economic affect on sector members (Table 1). The number of permits enrolled in a sector ranges from 8 to 129. The allocation to any given sector is based on the combined sum of the PSC for each stock associated with all permits enrolled in that sector. All sector operations plans convert the total ACE into an individual share proportional to the PSC that each member brings to the sector. This share is then allocated to the member to be fished by that member or traded to another sector member.

Sector operations plans include a number of harvesting rules designed to track catches, as required, but also contain provisions that require advance notification of when the sector or sector member may be approaching a harvest share limit or the sector's ACE for a given stock. This system may provide the information needed to allow sector members to more fully utilize their harvest share.

The EIS for Amendment 16 compared economic impacts of sector measures with common pool measures, and analyzed costs and benefits of the universal exemptions. In addition to the universal exemptions proposed for sectors in Amendment 16, several exemptions requested by various sectors could provide economic incentives to enroll in a sector. All exemptions requested by the sectors were intended to provide positive social and economic effects to sector members and ports. The following exemptions have been granted to the requesting sectors because each sector's ACE reduces the need for effort controls, and there are perceived economic benefits from such exemptions: The Day gillnet vessel 120-day block requirement out of the fishery; the prohibition on a vessel hauling gear that was set by another vessel; the 20-day spawning block out of the fishery; the limit on the number of hooks that may be fished; the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels; and the length and horsepower restrictions of the DAS Leasing Program.

Exemption from the Day gillnet vessel 120-day block requirement out of the fishery was requested by NFSs III and XI, the FGS, the SHS, the TSS, and the Port Clyde Sector. Existing regulations require that vessels using gillnet gear remove all gear from the water for 120 days per year. Since the time out from fishing is up to the vessel owner to decide (with some restrictions), many affected vessel owners have purchased more than one vessel such that one may be used while the other is taking its 120-day block out of the groundfish fishery, to provide for sustained fishing income. Acquiring a second vessel adds the expense of outfitting another vessel with gear and maintaining that vessel. The exemption from the 120-day block could allow sector members to realize the cost savings associated with retiring the redundant vessel.

NFSs III and XI requested an exemption from the prohibition on a vessel hauling gear that was set by another vessel. The community fixed gear exemption will allow sector vessels in the Day gillnet category to effectively pool gillnet gear that may be hauled or set by sector members. Along with a possible reduction in total gear fished, this provision could reduce the total amount of gear that has to be purchased and maintained by participating sector members, resulting in some uncertain level of cost savings.

The FGS requested an exemption from the number of hooks that may be fished, and an exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. These exemptions could provide vessel owners with the flexibility to adapt the number of hooks fished to existing fishing and market conditions and to haul monkfish gillnets set under the monkfish regulations more efficiently. This exemption could also provide an opportunity to improve vessel profitability.

The NCCS, SHS, and TSS requested an exemption from the required 20-day spawning block out of the fishery. Exemption from the 20-day spawning block would improve flexibility to match trip planning decisions to existing fishing and market conditions. Although vessel owners currently have the flexibility to schedule their 20-day block according to business needs and may use that opportunity to perform routine or scheduled maintenance, vessel owners may prefer to schedule these activities at other times of the year, or may have unexpected repairs. Granting this exemption could provide vessel owners with greater opportunity to make more efficient use of their vessel.

The SHS requested an exemption from the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels. This will provide greater flexibility to deploy fishing gear by participating sector members according to operational and market needs.

The SHS and TSS requested exemptions from regulations that currently limit leasing of DAS to vessels within specified length and horsepower restrictions. Current restrictions create a system in which a small vessel may lease DAS from virtually any other vessel, but is limited in the number of vessels that small vessels may lease to. The opposite is true for larger vessels. Exemption from these restrictions will allow greater flexibility to lease DAS between vessels of different sizes. However, the efficiency gains of doing so are uncertain and may be limited because the exemption would only apply to TSS and SHS members. Since DAS will not be required to harvest groundfish, the economic importance of this exemption will be associated with the need to use groundfish DAS when fishing in other fisheries, for example, monkfish.

Several comments that addressed requested exemptions about which NMFS had serious concerns were received; however, these comments did not provide any new or additional data to convince NMFS to approve these exemptions of serious concern. The exemption requests that are not approved for FY 2010 are from the GOM Rolling Closure Areas beyond the proposed Amendment 16 universal exemption areas; the 72-hour observer notification requirements for NMFS-funded at-sea monitoring; the Atlantic halibut one-fish trip limit during the Maine seasonal halibut fishery; the VMS reporting requirements; the paper VTR requirement; the prohibition on de-hookers; and the minimum fish size requirements. The economic impacts of not approving these exemptions are provided below.

In addition to the universal rolling closure exemptions described in section 4.2.3.9 of Amendment 16, six of the NFSs and the SHS requested additional exemptions from GOM Rolling Closure Areas. These include 30-minute blocks 124, 125, 132, and 133 in April, and block 138 in May. The Council voted to exempt sectors from the GOM Rolling Closure Areas, with the exception of portions that the Council believes should remain closed to protect cod spawning aggregations. Exempting sector vessels from additional rolling closures beyond the universal exemptions proposed by the Council in Amendment 16 could have improved profitability, since higher catch rates would mean that the same amount of groundfish could be caught at a lower cost. However, as previously explained, these exemptions were not granted because of impacts to spawning fish.

Eight of the NFSs and the FGS requested an exemption from the 72-hour observer notification requirements for NMFS-funded at-sea monitoring. The economic impacts of providing an exemption to the 72-hour observer notification requirement are uncertain, but this exemption could have provided vessel owners with additional flexibility when planning and preparing for fishing trips. Nonetheless, logistical constraints on the NEFOP prevent the authorization of this exemption. In addition, NMFS has already reduced this requirement from 72-hour to 48-hour in the final rule implementing Amendment 16.

The NCCS requested an exemption that would allow members to fish under Maine State regulations for halibut while fishing in State waters. The exemption could have provided additional fishing opportunities to improve sector member profitability. However, the potential to realize any improved profitability would have been limited by Maine State regulations that restrict the number of halibut that may be landed during a prescribed season to 50 fish per person. This exemption was not granted because the halibut stock remains overfished; thus, allowing an exemption from the halibut trip limit specifically to allow sector vessels to participate in a targeted halibut fishery would be inconsistent with the rebuilding program of the FMP.

All of the NFSs requested an exemption from the requirement that vessels transmit reports directly to NMFS via VMS. The economic impacts of providing an exemption from this requirement are uncertain. The exemption would have likely provided the sector as a whole with some flexibility to more efficiently handle the flow of information between the sector and NMFS in meeting the reporting requirements. Nonetheless, allowing vessels to submit required reports and declarations to a third party, rather than to NMFS directly, would have created insurmountable enforcement problems with the chain of custody of information. Denial of this exemption does not preclude sector member vessels from also sending reports to their sector manager or transmitting hails through the sector server for the purpose of dockside monitoring program requirements.

All of the NFSs, as well as the Sustainable Harvest and TSSs, requested permission to use eVTRs in place of paper VTRs to transmit catch data to NMFS. While this exemption would have likely reduced the administrative burden on sectors, this exemption was not granted, as an eVTR system that would address all of the needs of NMFS has not yet been developed. A pilot study is underway that would use eVTRs as well as paper VTRs to determine the viability of eVTRs as a replacement to the paper version. This option can be considered at a later date if NMFS' assessment of the pilot study concludes that eVTRs can fulfill all necessary requirements.

The FGS requested an exemption from the prohibition on the use of de-hookers with less than 6-inch (15.24-cm) spacing between the fairlead rollers. Exemption from this requirement would have provided affected vessel owners with greater flexibility to rig their vessels to maximize operational efficiency. However, the interim final rule implemented in 2002, and Amendment 13 in 2004, prohibited de-hookers with spacing less than 6 inches (15.24 cm) to discourage de-hooking strategies that may reduce survival of discarded fish. Additionally, National Standard 9 requires that NMFS minimize the mortality of bycatch that cannot be avoided.

The FGS and the TSS requested exemption from existing regulations that provide for minimum fish sizes for several different species. Any fish caught that measures below the minimum size must be discarded. To the extent that some portion of these fish would otherwise be marketable, exemption from minimum fish sizes would have improved the economic efficiency of member vessel owners. Since all discarded fish are assumed dead and would count against the sector's ACE, opportunities to maximize retention of any marketable fish would have increased the total value of the ACE. However, the magnitude of this potential benefit is uncertain, since the marketability of smaller size fish is unknown. Moreover, an exemption from the minimum fish size requirement presents significant enforcement issues by allowing two different fish sizes in the marketplace. Granting this exemption could also increase targeting of juvenile fish or increase mortality of a given weight, or year class(es), of fish.

Under the No Action alternative, none of the FY 2010 sector operations plans would be approved, and no sector would be approved to operate in FY 2010. While the sectors could remain implemented under proposed Amendment 16, under the No Action alternative for this rule, no sector would receive an authorization to fish, an allocation to fish, or any exemptions from the regulations. Under this scenario, vessels would remain in the common pool and fish under the common pool regulations in the FMP. Because of effort control changes proposed in both Amendment 16 and FW 44, it is likely that vessels enrolled in a sector for FY 2010 and forced to fish in the common pool would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that the ports and fishing communities where sectors plan to land their fish would be negatively impacted.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1966 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, a letter to sector members that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Regional Administrator. The guide and this final rule will be available upon request.

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

Dated: March 26, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–7236 Filed 3–31–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 68
Friday, April 9, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AM08

Pay for Sunday Work

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management is issuing proposed regulations that would implement the ruling in the case of *Fathauer* v. *United States,* 566 F.3d 1352 (Fed. Cir. 2009). In this decision the United States Court of Appeals for the Federal Circuit ruled that part-time employees are covered under the provisions of 5 U.S.C. 5546(a), the statute governing the payment of Sunday premium pay for work performed on Sundays. The revised Sunday premium pay regulations would eliminate references to "full-time" employees, which will permit Sunday premium payments to part-time employees, pursuant to 5 U.S.C. 5546(a). Prevailing rate employees are entitled to payment of Sunday premium pay, pursuant to 5 U.S.C. 5544(a). Consistent with the reasoning in the *Fathauer* decision, OPM has determined that part-time prevailing rate employees are covered under the provisions of 5 U.S.C. 5544(a).

DATES: Comments must be received on or before June 8, 2010.

ADDRESSES: You may submit comments, identified by RIN number "3206–AM08," using either of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Jerome D. Mikowicz, Deputy Associate Director, Employee Services, Pay and Leave, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: David Barash by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations that would implement the decision in *Fathauer* v. *United States,* 566 F.3d 1352 (Fed. Cir. 2009), in which the court determined that part-time employees are employees covered under the provisions of 5 U.S.C. 5546(a).

Background

Under the *Fathauer* decision, the United States Court of Appeals for the Federal Circuit held that the definition of "employee" in 5 U.S.C. 5546(a) is unambiguous under the plain language of the statute and concluded that part-time employees are covered under the Sunday premium pay statute at 5 U.S.C. 5546(a). OPM issued a compensation policy memorandum (CPM–2009–21, December 8, 2009) to inform departments and agencies of the *Fathauer* decision and to provide guidance for processing administrative claims for back pay. The guidance covers General Schedule employees covered by 5 U.S.C. 5546(a) and 5 CFR 550.171(a) and prevailing rate employees (wage grade employees) covered by 5 U.S.C. 5544(a) and 532.509. Based on the *Fathauer* decision, eligible part-time employees are entitled to Sunday premium pay under 5 U.S.C. 5546(a) effective as of May 26, 2009.

Change to Regulations

OPM's proposed regulations would amend §§ 550.103 and 550.171(a) to remove references to "full-time" employee. The intent is to eliminate the restriction on the payment of Sunday premium pay to full-time employees only. Therefore, the proposed regulations would clarify, in accordance with the *Fathauer* decision, that part-time employees who are regularly scheduled to perform work on a Sunday are entitled to Sunday premium pay for the non-overtime hours worked. However, intermittent employees will continue to be excluded from earning Sunday premium pay because of the nature of their appointment and irregular work schedule. Sunday premium pay may be paid only to full-time and part-time employees who have Sundays as part of their non-overtime regularly scheduled tour of duty.

Although OPM applied the reasoning in the *Fathauer* decision to determine that part-time prevailing rate employees are covered under the Sunday premium pay provisions under 5 U.S.C. 5544(a) (also effective as of May 26, 2009), there is no need for a change in the current regulations covering prevailing rate employees. Under § 532.509, a wage employee whose regular work schedule includes an 8-hour period of service which is not overtime work, a part of which is on Sunday, is entitled to additional pay under the provisions of 5 U.S.C. 5544. Since § 532.509 does not reference either part-time or full-time employees, there is no need to change this current regulation.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

John Berry,
Director, U.S. Office of Personnel Management.

Accordingly, OPM is proposing to amend 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

1. The authority citation for subpart A of part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5504(d), 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

2. In § 550.103, revise the definition of *Sunday work* to read as follows:

§ 550.103 Definitions.

* * * * *

Sunday work means nonovertime work performed by an employee during

a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday. For any such tour of duty, not more than 8 hours of work are Sunday work, unless the employee is on a compressed work schedule, in which case the entire regularly scheduled daily tour of duty constitutes Sunday work.

* * * * *

3. In § 550.171, revise paragraph (a) to read as follows:

§ 550.171 Authorization of pay for Sunday work.

(a) An employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work (as defined in § 550.103).

* * * * *

[FR Doc. 2010–8154 Filed 4–8–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2010–0218; Notice No. 10–03]

RIN 2120–AJ56

Function and Reliability Flight Testing for Turbine-Powered Airplanes Weighing 6,000 Pounds or Less

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise the applicability for function and reliability flight testing to include all turbine-powered airplanes weighing 6,000 pounds or less. Revising the applicability is necessary because advancements in aviation technology have invalidated the reasons for excluding these airplanes. The proposed revision would improve aviation safety for these airplanes.

DATES: Send your comments on or before July 8, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0218 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Victor Powell, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR–110, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–6312; facsimile (202) 385–6475; e-mail *victor.powell@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Federal Aviation Administration's (FAA) authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes the scope of the FAA Administrator's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, chapter 447, section 44701. Under that section, Congress charges the FAA with promoting the safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the FAA Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it will prescribe new safety procedures for turbine-powered airplanes.

Discussion of the Proposal

I. Statement of the Problem

For part 23, function and reliability (F & R) flight testing is required by Title 14, Code of Federal Regulations (14 CFR) 21.35(b)(2) for all airplanes weighing more than 6,000 pounds maximum certified weight. Function and reliability flight testing is not required for gliders, nor for part 23 airplanes weighing 6,000 pounds or less. Because of advancements in airplane structures, propulsion methods, and systems technologies, the 6,000 pound break point may no longer be justified. Turbine-powered airplanes that weigh 6,000 pounds or less are not required to undergo F & R flight testing regardless of the airplane's systems complexity or level of automation. After reviewing several recent TC projects for small turbojet-powered airplanes (turbojets)—involving airplanes expected to weigh 6,000 pounds or less—the FAA has determined that most, if not all, of these airplane designs would benefit from the F & R flight testing requirement. This determination is based on new lightweight, turbine-powered airplanes having design features and performance consistent with larger airplanes that are required to undergo F & R flight testing.

II. Background

A. What Is Function and Reliability Flight Testing?

Function and reliability flight testing simulates typical aircraft, in-service flight operations for a new aircraft design. This flight testing is done prior to the aircraft's final design approval leading to the issuance of a TC. The F & R flight testing requirement in § 21.35(b)(2) gives the FAA and the public a reasonable assurance that an aircraft, its components, and its equipment are reliable and function properly.

Function and reliability flight testing covers a wide variety of operations that an aircraft will likely undertake in service. Typically, F & R flight testing plans specify the type and number of each task to be completed (*i.e.,* takeoffs, landings, Instrument Landing Systems approaches, high altitude, hot/cold/humid air operations, stalls, in-flight engine restarts, engine starts using different power sources, flight in rain, and night flights).

In addition, F & R flight testing involves simulated in-service operations

using a mature aircraft configuration. Mature in this sense means the aircraft configuration that represents the type design that has been shown to meet the airworthiness standards of the aircraft's certification basis in accordance with applicable requirements of §§ 21.33 and 21.35(a). The regulatory sequencing prescribed by §§ 21.35(a) and (b) results in the aircraft configuration selected for F & R flight testing having successfully completed much, if not most, of the individual certification requirements for the issuance of a TC.

B. Historical Overview of Function and Reliability Flight Testing

The requirement for F & R flight testing originated with the Civil Aeronautics Board (CAB) imposing a "service test" requirement for aircraft in 1947. The purpose of these service tests was to "ascertain whether there is reasonable assurance that the airplane, its components, and equipment are reliable and function properly" (*see* 12 FR 2086, March 29, 1947). A related rulemaking included a reference to a study of accidents and maintenance issues of then relatively new model aircraft (*see* 12 FR 1028, February 13, 1947). That study showed extensive difficulties can occur in the initial stages of operating new aircraft.

The operation of new aircraft had a greater chance for accidents caused by mechanical malfunctioning of troublesome components or equipment. The CAB determined that accidents likely would be prevented if an aircraft were required to undergo tests specifically designed to ascertain the reliability and proper functioning of the aircraft and its systems and equipment before type certification.

In 1950, the CAB amended the airworthiness standards to exclude "* * * smaller airplanes, specifically those of 6,000 pounds maximum weight or less * * *" from the service test requirement (*see* 15 FR 8899, December 15, 1950). The introductory material published in the revision of the service test requirement explained that most of the significant changes in the amendment stemmed from "the desire for simplification of the rules in this part with respect to the smaller airplanes, specifically those of 6,000 pounds maximum weight or less, which would be expected to be used mainly as personal airplanes." [1] The introductory material also stated the service test requirement was removed for airplanes of 6,000 pounds or less maximum weight because "experience seems to indicate that this rule imposes a burden upon the manufacturers not commensurate with the safety gained." [2]

With the recodification of airworthiness standards in 1964 and 1965, the requirement for F & R flight testing was placed in § 21.35(b)(2). The exclusion of smaller airplanes weighing 6,000 pounds or less maximum certificated weight was described in terms of aircraft type certificated in accordance with part 23.

III. The Need for This Proposal

A. Evolution of Aviation Technology

The decision to exclude certain airplanes of 6,000 pounds or less maximum weight from F & R flight testing was based on the state of technology existing in 1950. At that time, airplanes of 6,000 pounds or less maximum weight were expected to be used mainly as personal airplanes. Such civil aircraft developed between the years of 1945 and 1955 were typically single, reciprocating-engine powered airplanes weighing less than 3,000 pounds with engine output of less than 300 horsepower. Technological advancements now allow airplanes that weigh 6,000 pounds or less to be more complex and integrated than some transport category airplanes of the 1960s and earlier.

B. Purpose of Function and Reliability Flight Testing

The safety goal of F & R flight testing is to identify and reduce aircraft system malfunctions or failures that would be more than inconvenient nuisances routinely accommodated in normal operations. By minimizing flight crew distractions from system malfunctions, new aircraft entering service are protected from the flight crew workload consequences of aircraft system deficiencies. Function and reliability flight testing will target deficiencies that may not have been apparent during aircraft engineering ground and flight test programs.

C. Very Light Jet Certification Experience

Recent FAA TC program experience with the new very light jets (VLJ) has led to reconsideration of the existing exclusion of airplanes weighing 6,000 pounds or less in § 21.35(b)(2). This reconsideration was driven in part by difficulties encountered with the voluntary application of the requirement during the FAA type certification of the Eclipse Aviation Corporation's (Eclipse) EA–500 VLJ and the subsequent problems experienced during that airplane's entry into service.

The FAA assembled a team of technical staff to conduct a Special Certification Review (SCR) of the EA–500 certification program. A copy of the Eclipse SCR has been placed in the Rules Docket for this rulemaking.[3] That team's report reviewed the FAA's TC program and focused on four service problems encountered during the EA–500's entry into service. That team also reviewed Service Difficulty Report (SDR) experience concerning airplane system deficiencies and malfunctions encountered subsequent to the EA–500's entry into service. The team developed eight findings and six recommendations. One of the SCR findings (Finding No. 8) stated: "The newly designed VLJs have modern and integrated complex avionics. The traditional approach of defining certification requirements for part 23 airplanes based solely on maximum certificated weight is no longer valid." [4] The FAA has issued a separate rulemaking proposal to address Finding No. 8 (*see* "Certification of Turbojets," 74 FR 41522, August 17, 2009). A corresponding recommendation (Recommendation No. 6) in the Eclipse SCR stated: "The FAA should reevaluate the criteria for applicability of F & R testing." [5] The Eclipse SCR further found that the EA–500 complied with the requirements of its certification basis and noted that the airplane was not required by existing regulations to include the F & R flight testing requirements of § 21.35(b)(2). This rulemaking proposal addresses Recommendation No. 6, which called for a revision of the applicability of the existing F & R flight testing requirements.

After reviewing the Eclipse SCR and the EA–500 certification program, the FAA reviewed the likelihood that F & R flight testing requirements might have preventatively identified problems encountered by the EA–500 when it entered into service. Function and reliability flight testing might have discovered five of the problems identified in the SCR (pitch and rudder trim problems; pitot system moisture trap; engine surges caused by hard carbon build-up on the static vanes; brake problems; and tire problems) while two of the cited problems (autopilot turbulence sensitivity; and problems with the software logic

[1] *Id.*

[2] *Id.*

[3] A Subcommittee of the United States Congress held hearings on problems related to the introduction of the Eclipse VLJ (Refer to House of Representatives Subcommittee on Aviation, Hearing No. 110–169, September 17, 2008).

[4] Special Certification Review (SCR) of the Eclipse 500 certification program.

[5] *Id.*

dealing with the throttle position) would less likely have been detected, based on the chances of duplicating causal conditions and other risk factors.

These conclusions were based on the likelihood that the root causes for the reported problems would be identified by the additional effective flight testing that would be accomplished by a mandatory F & R flight testing program (150 or 300 additional hours of simulated in-service operations accomplished in various environments and locations). Section 21.35(f) has the criteria for selection of 150 or 300 hours, a provision that is not changed in this proposal.

This proposal would expand the applicability of F & R flight testing requirements to all turbine-powered airplanes that weigh 6,000 pounds or less, while retaining the exception for gliders and reciprocating-engine powered airplanes type certificated under 14 CFR part 23.

IV. Regulatory Notices and Analyses

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no information collection burden associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Initial Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full initial regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is not "significant" as defined in the DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Costs and Benefits of This Proposed Rule

We expect that the typical certification project for an airplane subject to the proposed rule would be for a new airplane design with a turbine engine previously used in a type-certificated aircraft requiring 165 hours [6] of F & R flight testing at a total cost of $317,000. In the case of a new airplane design and an engine not previously used on a certificated airplane, we estimate that double the hours (330 hours) would be required, so the total cost would double to $634,000.

We expect that adoption of this proposed rule would enhance safety and reduce costs by substantially reducing the number of safety incidents and post-certification Airworthiness Directives (AD). A partial estimate of the expected costs that would be avoided for a single new airplane design amounts to $1.8 million, with a present value of $1.6 million. These avoided costs are approximately six times the costs of our 165-hour estimate ($317,000) and approximately three times the higher 330-hour estimate ($634,000). Consequently, the benefits of this proposed rule greatly exceed its modest costs. For additional detail, *see* the separate sections on costs and benefits below.

The FAA solicits comments on our determination of costs and benefits and our expectation that this proposed rule would enhance safety and reduce costs.

Who Is Potentially Affected by This Rule?

Manufacturers of part 23 turbine-powered airplanes weighing 6,000 pounds or less are potentially affected.

Assumptions and Sources of Information

- We use a two-year period of analysis, as we find this period sufficient to show the cost-beneficial nature of this proposed rule. We use the period from the beginning of 2007 to the end of 2008, as the data used in the analysis are from this period. The short period of analysis reflects the inherent nature of F & R flight testing, designed as it is to uncover design flaws that otherwise would reveal themselves in the very early life of an airplane.
- Discount rate is 7% (Office of Management and Budget, Circular A–94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs," October 29, 1992, p. 8).
- Data on costs of compliance with this proposal were obtained from a part 23 airplane manufacturer and FAA estimates.

Costs of This Proposed Rule

Aircraft subject to F & R flight testing under 14 CFR 21.35(b)(2), § 21.35(f) require at least 300 hours of F & R flight testing for aircraft "incorporating turbine engines of a type not previously used in a type certificated aircraft" and at least 150 hours for all other aircraft. Unless a totally new engine is used, it is rare that the applicant is required to run a full 300-hour program. Generally, an applicant with a new aircraft design, but with an engine previously used in a type-certificated aircraft, would be required to conduct at least 150 hours of F & R flight testing. As most VLJ projects appear to be based on derivatives of the Williams FJ–33 engine or other previously-certificated engines, we expect this requirement to hold for

[6] *See* the separate cost section below for the reason we increased the number of hours from 150 hours, the minimum required by § 21.35(f), to 165 hours.

the typical project subject to this proposed rule. Failures during F & R flight testing, however, occasionally lead to extension of the required hours. We estimate that the average extension is 10%, or 15 hours, so our "typical" estimate assumes 165 hours of F & R flight testing. We double that estimate to also provide an estimate for a new airplane design with a new engine design.

Our final figures are $317,066 for a 165-hour program and $634,132 for a 330-hour program.

Benefits of This Proposed Rule

We expect that adoption of this proposed rule would enhance safety and reduce costs by substantially reducing the number of service difficulties experienced post-certification. This expectation is supported by evidence from the service experience of the EA–500. The Eclipse SCR[7] team looked at 85 Eclipse SDRs submitted between July 29, 2007 and May 13, 2008. The Eclipse SCR team "concluded the majority of the SDRs resulted from reliability issues separate from compliance with the minimum FAA standards" (*see* SCR, Executive Summary). There also were 6 Eclipse-related ADs issued in the one-year period between November 2007 and November 2008. In any case, the pitot/angle of attack (AOA) issue (SCR, p. 25; AD 2008–02–04) is the one most likely to have been uncovered by a mandatory F & R flight testing program. Extending the AD estimate to the entire U.S.-registered Eclipse EA–500 fleet (264 airplanes), we estimate the total cost of the pitot/AOA problem to be $2.5 million. As discussed above, however, we assess the probability of F & R flight testing uncovering the pitot/AOA problem to be approximately 0.7 to 0.75. Using the lower figure, we accordingly calculate the *expected* benefit as the total cost avoided of $2.5 million times 0.7, or $1.8 million. Since the FAA issued a type certificate on September 30, 2006, approximately 1.5 years prior to the compliance date for this AD, we discount the expected benefit 1.5 years to find present value benefit of $1.6 million.

Thus, the $1.6 million benefit from avoiding just this one problem greatly exceeds our $317,066 estimated typical cost of F & R flight testing.

[7] Special Certification Review: Eclipse Aviation Corporation Model EA–500 Airplane. Prepared for the Federal Aviation Administration Associate Administrator for Aviation Safety, September 12, 2008.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant impact on a substantial number of entities for the following reason: The cost of requiring F & R flight testing is small and a very small percentage of development, certification, and production costs. Consequently, requiring F & R flight testing for turbine-powered airplanes weighing 6,000 pounds or less would have a minimal cost impact on manufacturers of airplanes in this category. Therefore the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined the purpose is to promote safety and is thus not considered an unnecessary obstacle to foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply to this proposal.

Executive Order 13132, Federalism

The FAA analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. The proposed rule would apply to the certification of airplanes that may be used for air transportation in Alaska. In light of air transportation needs, and terrain and aviation environment conditions unique

to that state, we anticipate that safety benefits of the proposal would be correspondingly higher than expected for aviation operations in the continental National Airspace System (NAS).

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this proposal under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant regulatory action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited:

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information:

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents:

You can get an electronic copy of rulemaking documents using the Internet by—

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

2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies:* or

3. Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS, ARTICLES, AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

2. Amend § 21.35 by revising paragraph (b)(2) to read as follows:

§ 21.35 Flight tests.

* * * * *

(b) * * *

(2) For aircraft to be certificated under this subchapter, except gliders and except reciprocating engine powered airplanes of 6,000 lbs. or less maximum certificated weight that are to be certificated under part 23 of this chapter, to determine whether there is reasonable assurance that the aircraft, its components, and its equipment are reliable and function properly.

* * * * *

Issued in Washington, DC, on April 2, 2010.

Kalene C. Yanamura,

Acting Director, Aircraft Certification Service.

[FR Doc. 2010–8130 Filed 4–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 108

[Docket ID: DOD–2009–OS–0036; RIN 0790–AI52]

Health Care Eligibility Under the Secretarial Designee Program and Related Special Authorities

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This proposed action would establish policies and assign responsibilities for health care eligibility under the Secretarial Designee Program. It would also implement the requirement where the United States would receive reimbursement for inpatient health care provided in the United States to foreign military or diplomatic personnel or their dependents, except in certain cases covered by Reciprocal Health Care Agreements (RHCAs) between the Department of Defense and a foreign country.

DATES: Comments must be received by June 8, 2010.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Col Michael Skidmore, (703) 614–4157.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been certified that 32 CFR part 108 does not:

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

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

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

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

Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 108 does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 108 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 108 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 108 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 108

Diplomatic personnel, Health care, Military personnel.

Accordingly, 32 CFR part 108 is proposed to be added to read as follows.

PART 108—HEALTH CARE ELIGIBILITY UNDER THE SECRETARIAL DESIGNEE PROGRAM AND RELATED SPECIAL AUTHORITIES

Sec.
108.1 Purpose.
108.2 Applicability.
108.3 Definition.
108.4 Policy.
108.5 Eligible senior officials of the U.S. Government.
108.6 Responsibilities.

Authority: 10 U.S.C. 1074(c); 10 U.S.C. 2559.

§ 108.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities under 10 U.S.C. 1074(c) for health care eligibility under the Secretarial Designee Program.

(b) Implements the requirement of 10 U.S.C. 2559 that the United States receive reimbursement for inpatient health care provided in the United States to foreign military or diplomatic personnel or their dependents, except in certain cases covered by Reciprocal Health Care Agreements (RHCAs) between the Department of Defense and a foreign country.

§ 108.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) Does not apply to health care services provided to coalition forces in operational settings, or to allied forces in overseas training exercises and similar activities. Also, does not apply to health care services provided to foreign nationals overseas under DoD Instruction 3000.05 [1], DoD Instruction 2205.2 [2], or DoD Instruction 2310.08E [3].

§ 108.3 Definition.

Secretarial Designee Program. The program established under 10 U.S.C. 1074(c) to create by regulation an eligibility for health care services in military medical treatment facilities (MTFs) as well as dental treatment facilities for individuals who have no such eligibility under 10 U.S.C. chapter 55.

§ 108.4 Policy.

It is DoD policy that:

(a) *General Policy.* The use of regulatory authority to establish DoD health care eligibility for individuals without a specific statutory entitlement or eligibility shall be used very sparingly, and only when it serves a compelling DoD mission interest. When used, it shall be on a reimbursable basis, unless non-reimbursable care is authorized by this part or reimbursement is waived by the Under Secretary of Defense (Personnel & Readiness) (USD(P&R)) or the Secretaries of the Military Departments when they are the approving authority.

(b) *Foreign Military Personnel and Their Dependents*—(1) *MTF Care in the United States.* Foreign military personnel in the United States under the sponsorship or invitation of the Department of Defense, and their dependents approved by the Department of Defense to accompany them, are eligible for space-available care as provided in DoD Instruction 1000.13.[4] Consistent with 10 U.S.C.

[1] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/300005p.pdf.*

[2] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/220502p.pdf.*

[3] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/html/231008.htm.*

[4] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/100013p.pdf.*

2559, in cases in which reimbursement is required by DoDI 1000.13, a RHCA may provide a waiver of reimbursement for inpatient and/or outpatient care in the United States in a military medical treatment facility for military personnel from a foreign country and their dependents, if comparable care is made available to at least a comparable number of U.S. military personnel and their dependents in that foreign country. RHCAs may have durations of up to 4 years, provided that there is a revalidation every 2 years of continuing compliance with the requirements for comparable care and comparable numbers. A disparity of 25 percent or less in the number of foreign personnel and dependents above U.S. personnel and dependents shall be considered within the range of comparable numbers.

(2) *Non-MTF Care in the United States.* Foreign military personnel in the United States under the sponsorship or invitation of the Department of Defense, and their dependents approved by the Department of Defense to accompany them, are not eligible for DoD payment for outpatient or inpatient care received from non-DoD providers, except for such personnel covered by the North Atlantic Treaty Organization Status of Forces Agreement (SOFA) or the Partnership for Peace SOFA and authorized care under the TRICARE Standard program according to § 199.3 of this title, outpatient care may be provided as specified therein.

(c) *Foreign Diplomatic or Other Senior Foreign Officials.* Foreign diplomatic or other senior foreign officials and the dependents of such officials may be provided inpatient or outpatient services in MTFs only in compelling circumstances, including both medical circumstances and mission interests, and through case-by-case approval.

(1) In the United States, the approval authority is the USD(P&R). The authority to waive reimbursement for care provided in the United States, to the extent allowed by law, is the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority.

(2) Requests from the State Department or other agency of the U.S. Government will be considered on a reimbursable basis.

(3) Under 10 U.S.C. 2559, reimbursement to the United States for care provided in the United States on an inpatient basis to foreign diplomatic personnel or their dependents is required.

(d) *Other Foreign Nationals.* Other foreign nationals (other than those described in paragraphs (b) and (c) of this section) may be designated as eligible for space-available care in MTFs only in extraordinary circumstances.

(1) The authority to waive reimbursement for care provided in the United States, to the extent allowed by law, is the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority. Waiver requests will only be considered based on a direct and compelling relationship to a priority DoD mission objective.

(2) Requests from the State Department or other agency of the U.S. Government will be considered on a reimbursable basis. Such requests must be supported by the U.S. Ambassador to the country involved and the Geographical Combatant Commander for that area of responsibility and must be premised on critically important interests of the United States.

(e) *Invited Persons Accompanying the Overseas Force.* The Secretaries of the Military Departments and the USD(P&R) may designate as eligible for space-available care from the Military Health System outside the United States those persons invited by the Department of Defense to accompany or visit the military force in overseas locations or invited to participate in DoD-sponsored morale, welfare, and recreation activities. This authority is limited to health care needs arising in the course of the invited activities. Separate approval is needed to continue health care initiated under this paragraph in MTFs in the United States.

(1) In the case of employees or affiliates of news organizations, all care provided under the authority of introductory paragraph (e) of this section is reimbursable. For other individuals designated as eligible under this paragraph (e), the designation may provide, to the extent allowed by law, for outpatient care on a non-reimbursable basis, and establish a case-by-case authority for waiver of reimbursement for inpatient care.

(2) This paragraph (e) does not apply to employees of the Executive Branch of the United States or personnel affiliated with contractors of the United States.

(f) *U.S. Nationals Overseas.* Health care for U.S. nationals overseas is not authorized, except as otherwise provided in this part.

(g) *U.S. Government Civilian Employees and Contractor Personnel.* (1) Civilian employees of the Department of Defense and other government agencies, and employees of DoD contractors, and the dependents of such personnel are eligible for MTF care to the extent provided in DoD Instruction 1000.13.

(2) Occupational health care services provided to DoD employees under 5 U.S.C. 7901, authorities cited in DoD Instruction 6055.1,[5] or under other authorities except 10 U.S.C. 1074(c) are not affected by this part. The Secretaries of the Military Departments and the USD(P&R) may designate DoD civilian employees, applicants for employment, and personnel performing services for the Department of Defense under Federal contracts as eligible for occupational health care services required by the Department of Defense as a condition of employment or involvement in any particular assignment, duty, or undertaking.

(3) Any health care services provided by the Military Health System to employees of DoD non-appropriated fund instrumentalities shall be on a reimbursable basis.

(4) In the case of DoD civilian employees forward deployed in support of U.S. military personnel engaged in hostilities, eligibility for MTF care (in addition to all eligibility for programs administered by the Department of Labor Office of Workers' Compensation Programs (OWCP)) is as follows:

(i) Consistent with Policy Guidance for Provision of Medical Care to DoD civilian Employees Injured or Wounded While Forward Deployed in Support of Hostilities,[6] DoD civilian employees who become ill, contract diseases, or are injured or wounded while so deployed are eligible for medical evacuation or health care treatment and services in MTFs at the same level and scope provided to military personnel, all on a non-reimbursable basis.

(ii) DoD civilian employees who, subsequent to such deployment, identify OWCP-compensable conditions are eligible for MTF care for such conditions, all on a non-reimbursable basis.

(iii) USD(P&R) may, under compelling circumstances, approve additional eligibility for care in MTFs for other U.S. Government civilian employees who become ill or injured while so deployed, or other DoD civilian employees overseas.

(5) *Contractor Personnel Authorized to Accompany U.S. Armed Forces.* In the case of contractor personnel authorized to accompany U.S. Armed Forces in deployed settings under DoD

[5] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/605501p.pdf.*

[6] Copies available at OASD (Health Affairs/TMA FHP&RP), 1200 Defense Pentagon, Room 3E1073, Washington, DC 20301–1200.

Instruction 3020.41[7], MTF care may be provided as stated in DoD Instruction 3020.41.

(h) *Health Care.* The Secretaries of the Military Departments and the USD(P&R) may designate emergency patients as eligible for emergency health care from MTFs in the United States emergency patients pursuant to arrangements with local health authorities or in other appropriate circumstances. Such care shall be on a reimbursable basis, unless waived by the USD(P&R) or the Secretaries of the Military Departments when they are the approving authority.

(i) *Research Subject Volunteers.* Research subjects are eligible for health care services from MTFs to the extent DoD Components are required by DoD Directive 3216.02 [8] to establish procedures to protect subjects from medical expenses that are a direct result of participation in the research. Such care is on a non-reimbursable basis and limited to research injuries (unless the volunteer is otherwise an eligible health care beneficiary).

(j) *Continuity of Care Extensions of Eligibility.* The Secretaries of the Military Departments and the USD(P&R) may establish temporary eligibility on a space-available basis for former members and former dependents of members of the seven Uniformed Services for a limited period of time, not to exceed 6 months, or in the case of pregnancy, the completion of the pregnancy, after statutory eligibility expires when appropriate to allow completion or appropriate transition of a course of treatment begun prior to such expiration. In the case of a pregnancy covered by this paragraph, the designation of eligibility may include initial health care for the newborn infant. Care under this paragraph is authorized on a non-reimbursable basis.

(k) *Members of the Armed Forces.* The Secretaries of the Military Departments and the USD(P&R) may establish eligibility not specifically provided by statute for critical mission-related health care services for designated members of the Armed Forces, such as Reserve Component members not in a present duty status. This authority includes payment for health care services in private facilities to the extent authorized by 10 U.S.C. 1074(c). Care under this paragraph is non-reimbursable.

(l) *Certain Senior Officials of the U.S. Government.* The officials and others listed in § 108.5 part are designated as eligible for space-available inpatient and outpatient health care services from the Military Health System on a reimbursable basis.

(m) *Nonmedical Attendants.* The Secretaries of the Military Departments and the USD(P&R) may designate as eligible for space available MTF care persons designated as nonmedical attendants as defined by 37 U.S.C. 411k(b). Costs of medical care rendered are reimbursable unless reimbursement is waived by the Secretary of the Military Department concerned or USD(P&R). This authority is limited to health care needs arising while designated as a nonmedical attendant.

(n) *Patient Movement.* Provisions of this part concerning inpatient care shall also apply to requests for patient movement through the medical evacuation system under DoD Instruction 6000.11.[9] Aeromedical evacuation transportation assets are reserved for those individuals designated as Secretarial Designees who need transportation to attain necessary health care.

(o) *Other Individuals Entitled to DoD Identification (ID) Card.* Other individuals entitled to a DoD ID card under DoD Instruction 1000.13 are eligible for space-available MTF health care to the extent provided in DoD Instruction 1000.13.

(p) *Reciprocity among Military Departments.* Subject to the capabilities of the professional staff, the availability of space and facilities, and any other limitation imposed by the approving authority, all Services will provide medical treatment to individuals that have been granted Secretarial designee status by any of the Secretaries of the Military Departments. Each agreement must identify the specific MTF or geographical region in which medical care is requested, requiring close coordination among service program managers. Secretarial designee status may have durations of up to two years.

§ 108.5 Eligible senior officials of the U.S. Government.

(a) The following individuals are Secretarial Designees for space-available care in MTFs on a reimbursable basis:

(1) The President and the Vice President.

(2) Members of Congress.

(3) Members of the Cabinet.

(4) Officials of the Department of Defense appointed by the President and confirmed by the Senate.

(5) Article III Federal Judges. (Article III courts are: The Supreme Court of the United States, U.S. Courts of Appeal, U.S. District Courts, U.S. Court of International Trade, United States Foreign Intelligence Surveillance Court, United States Foreign Intelligence Surveillance Court of Review.)

(6) Judges of the U.S. Court of Appeals for the Armed Forces.

(7) Assistants to the President.

(8) Director of the White House Military Office.

(9) Former Presidents of the United States and their spouses, widows, and minor children.

(b) [Reserved]

§ 108.6 Responsibilities.

(a) The USD(P&R) shall evaluate requests for and where appropriate, grant exceptions to policy established by this part and DoDD 5124.02,[10] including waiver of reimbursement, to the extent allowed by law.

(b) The USD(P)) shall evaluate requests and determine DoD mission interest for Secretarial Designee Status and RHCAs to identify those agreements that would be in the best interest of the Department of Defense and approve negotiations of RHCAs by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

(c) The USD(C)) shall, in coordination with ASD(HA), establish appropriate reimbursement rates, including appropriate interagency rates and rates applicable to students in International Military Education and Training programs.

(d) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall evaluate requests for Exception to the Transportation Policy. The authority to grant such a exception is by USD(P&R) or the Secretary of the Military Department concerned.

(e) The ASD(HA), under the authority, direction, and control of the USD(P&R), shall, following approval of the USD(P) and USD (P&R) and in coordination with USD(P) and the GC, DoD, and in accordance with DoD Directive 5530.3,[11] begin negotiations, negotiate, and have the authority to sign RHCAs.

(f) The Secretaries of the Military Departments shall:

(1) Issue, revise, or modify as appropriate, regulations to comply with this part.

(2) Appoint a Military Department representative who will administer the

[7] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf.*

[8] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/321602p.pdf.*

[9] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/600011p.pdf.*

[10] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf.*

[11] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/html/553003.htm.*

Secretarial Designee Program within the Military Department and coordinate with other DoD Components in its effective operation.

(3) Where and when appropriate, the Military Department concerned shall coordinate with U.S. Transportation Command/Global Patient Movement Requirements Center.

(4) Provide written quarterly reports to the USD(P&R) and USD(C) reflecting the number of individuals designated as Secretarial Designees within their Military Departments, the reasons for such designation, the expected duration of such designation, the costs and sources of funding authorizing the support of such designee status for each designee.

(5) Create a Patient Category code to identify Secretarial Designees treated at MTFs.

(6) Provide an annual consolidated list reflecting the number of Secretarial Designees within their departments, reasons for such designation, location where designee is receiving treatment, the costs and sources of funding, nature and duration of treatment and expiration date of designee status to USD(P&R), USD(C), and ASD(HA).

(i) In cases where the USD(P&R) designates an individual as a Secretarial Designee, the Military Department concerned shall include this individual on any lists provided to USD(P&R) and USD(C) for reporting purposes.

(ii) Annually consolidate Secretarial Designee patient costs and forward those data to ASD(HA) and USD(C), along with a report of collection for reimbursable costs.

(g) The Commanders of the Geographic Combatant Commands (GCCs) shall:

(1) Refer requests to waive reimbursement through the Chairman of the Joint Chiefs of Staff to the USD(P&R).

(2) Refer requests for Secretarial Designee status for medical care in the United States through the Chairman of the Joint Chiefs of Staff to USD(P&R).

(3) Through the Chairman of the Joint Chiefs of Staff, provide written quarterly reports to the USD(P&R) and USD(C) reflecting the number of individuals designated as Secretarial Designees within their geographic area of responsibility, the reasons for such designation, the expected duration of such designation, the costs and sources of funding authorizing the support of such designee status for each designee.

(4) Use existing approved Patient Category code(s) to identify Secretarial Designees treated at MTFs within their geographic area of responsibility.

(5) Provide for an accounting and collection system for reimbursement of medical costs within their geographic area of responsibility.

(6) Provide an annual consolidated list reflecting the number of Secretarial Designees within their respective geographic areas of responsibility, reasons for such designation, location where designee is receiving treatment, nature and duration of treatment, and expiration date of designee status through the Chairman of the Joint Chiefs of Staff to USD(P&R), USD(C), and ASD(HA).

(h) Commander, United States Transportation Command shall:

(1) Coordinate patient movement with all concerned Military Departments.

(2) Upon request of the Military Department concerned or Commanders of the GCCs, determine availability of DoD transportation assets, or when cost effective, coordinate with civilian ambulance authorities, to effect transportation of Secretarial Designee as appropriate.

(3) Ensure the Global Patient Movement Requirements Center, as the regulating agency, will consistently serve as the single point of contact for patient movement for Secretarial Designee patients using DoD assets upon request.

(4) Annually consolidate Secretarial Designee patient listing who utilized the DoD patient movement system and forward to ASD(HA) and USD(C).

Dated: April 6, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8161 Filed 4–8–10; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0988; FRL–9135–5]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution From Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) that amend Title 30 of the Texas Administrative Code (TAC), Chapter 114, Control of Air Pollution from Motor Vehicles. The State submitted these revisions on May 15, 2006, October 10, 2006, January 17, 2008, and February 28, 2008. These revisions establish the Rebate Grant Process and the Texas Clean School Bus Program under the Texas Emissions Reduction Plan (TERP), further amend the TERP, and amend the Locally Enforced Motor Vehicle Idling Limitations. The EPA is proposing to approve these SIP revisions because they allow for clarity and consistency of the SIP requirements. The EPA is proposing to approve these revisions pursuant to section 110 of the Federal Clean Air Act (CAA).

DATES: Written comments must be received on or before May 10, 2010.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7241; fax number 214–665–7263; e-mail address *medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: March 24, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–8004 Filed 4–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0045; FRL–9124–4]

Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from operations associated with graphic arts coating, can coating, degreasing, and wood products coating. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by *May 10, 2010.*

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2010–0045], by one of the following methods:

1. *Federal eRulemaking Portal*: *www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SMAQMD Rule 450 Graphic Arts, SMAQMD Rule 452 Can Coating, SMAQMD Rule 454 Degreasing Operations, and SMAQMD Rule 463 Wood Products Coating. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, *please see* the direct final action.

Dated: February 5, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–8001 Filed 4–8–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 75, No. 68

Friday, April 9, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, April 23, 2010. The meeting is scheduled to begin at 9:30 a.m. and will conclude at approximately 12:30 p.m. The meeting will be held at Salem Office of the Bureau of Land Management Office; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Election of chairperson; (2) Decision on overhead rate for 2011 projects; (3) Presentation of 2011 Projects; and (4) Public Forum.

The Public Forum is tentatively scheduled to begin at 10:15 a.m. Time allotted for individual presentations will be limited to 4–5 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the April meeting by sending them to Connie Athman at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Connie Athman; Mt. Hood National Forest; 16400 Champion Way; Sandy, Oregon 97055; (503) 668–1672.

Dated: April 2, 2010.

Bill Westbrook,

Acting Deputy Forest Supervisor.

[FR Doc. 2010–7989 Filed 4–8–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Kemmerer Ranger District, Bridger-Teton National Forest, Wyoming Kemmerer Grazing and Rangeland Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Bridger-Teton National Forest will prepare an Environmental Impact Statement to analyze the effects of continued authorization of grazing on 16 sheep allotments on the Kemmerer Ranger District in southwest Wyoming. The first Notice of Intent to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** on 11/17/2008 (Volume 73, #222, pages 67835–67836) and included 15 grazing allotments. This Notice of Intent is revised from the original to include the addition of the Porcupine allotment to the proposed project area. The project area encompasses 176,828 acres of National Forest System lands within Lincoln County of western Wyoming. Most of the project area's east boundary is west of Commissary Ridge; the west boundary is Salt Creek. The center of the project area lies roughly 17 air miles northeast of Cokeville, Wyoming. The allotments included in the analysis are: Porcupine, Lower Salt Creek, Buckskin Knoll, Lake Alice, Smiths Fork, Aspen Springs, Basin Creek, Devil's Hole, Elk Creek, Green Knoll, Indian Creek, Lake Mountain, Pole Creek, Sams Allen Creek, South Fontenelle and Spruce Creek Allotments.

The analysis contained in the EIS will be used by the Responsible Official to decide whether or not, and if so, how to authorize livestock grazing and manage rangeland vegetation within the project area.

DATES: Comments concerning the scope of the analysis were solicited in the 11/17/2008 Notice of Intent. All comments that were received during the previous analysis period are being considered in the current analysis. The Draft EIS is expected in May of 2010 and the Final EIS is expected in September of 2010.

ADDRESSES: District Ranger, Kemmerer Ranger District, Kemmerer Ranger District, Bridger-Teton National Forest, 308 U.S. Highway 189 North, Kemmerer, WY 83101. Send electronic mail to: *comments-intermtn-bridger-teton-kemmerer@fs.fed.us* and on the subject line put only "Kemmerer Grazing Allotments."

FOR FURTHER INFORMATION CONTACT: Aimee Cameron, Rangeland Management Specialist, Kemmerer Ranger District, 308 U.S. Highway 189 North, Kemmerer, WY, 83101 (307–828–5115), *amieecameron@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this analysis is to determine if continued livestock grazing is appropriate within the project area. If livestock grazing is re-authorized then the adaptive management strategies under which grazing would be managed to maintain or achieve desired conditions and meet Forest Plan objectives. Desired conditions are defined by the Bridger Teton Land and Resource Management Plan, Forest Service Manual, and applicable laws. This effort is undertaken to comply with the 1995 Rescissions Act (Pub. L. 104–19).

Proposed Action

The proposed action is to continue to authorize livestock grazing on 16 allotments within the project area with updated livestock grazing and rangeland vegetation management direction. Resource desired conditions are identified. Grazing practices addressing frequency of grazing and of rest from grazing will be guided by the amount and diversity of vegetation given the capability of soils, as well as indicators of soil quality such as amount of ground cover, sign of active erosion and healing of headcuts. Other Best Management Practices addressing the timing, duration, and in specific settings the intensity, of use are identified. Adaptive management is part of the proposed action. Identified are: criteria to guide management, pre-determined optional courses of action used to make adaptive changes in management over time, and the focused monitoring which provides the basis for adjusting management to attain desired resource conditions. One last element of rangeland vegetation

management, non-structural improvements, is included. Allotment Management Plans will become part of a re-issued term grazing permit and contain the livestock grazing and rangeland vegetation management direction identified by the Responsible Official's decision.

Possible Alternatives

To date the Bridger-Teton National Forest has identified two alternatives to the proposed action: (A) No Domestic Livestock Grazing, and (B) Continuation Of Current Livestock Management. Alternative A would eliminate livestock grazing on the project area over the next five years. This alternative will demonstrate the effects of eliminating livestock grazing on the environment and more clearly illustrate the potential effects of implementing any grazing and rangeland vegetation management alternative. Alternative B would continue current grazing management practices including annual adjustments in authorized livestock numbers and season.

Responsible Official

The official responsible for this proposed action is the Kemmerer District Ranger, Kemmerer Ranger District, Bridger-Teton National Forest, 308 U.S. Highway 189 North, Kemmerer, WY 83101.

Nature of Decision To Be Made

The decision to be made, based on this analysis, is if livestock will be allowed to continue to graze on 16 allotments within the project area, and if so, under what management direction. The management direction would be either through implementation of the proposed action or a grazing alternative to the proposed action.

Preliminary Issues

Preliminary issues associated with the proposed action include:

(1) The amount and diversity of vegetation in some locations is less than the current capability of soils.

(2) Sediment delivery to drainages supporting fisheries, and retention of precipitation on uplands, as evidenced by headcutting/gullies and sign of active erosion.

(3) Wildlife values within some aspen stands are minimized by a lack of diverse aspen age classes; in some locationss the diversity of herbaceous and shrub species in the sunderstory is also diminished.

Scoping Process

This Notice of Intent continues the scoping process. The first formal opportunity to respond to the proposed action was during the public scoping process (40 CFR 1501.7) which began with the issuance of the Notice of Intent to prepare an EIS published in the **Federal Register** on 11/17/2008 (Volume 73, #222, pages 67835–67836). A scoping letter was mailed to those listed on the Bridger-Teton National Forest's general mailing list on 11/18/2008. The mailing list included private landowners, term grazing permit holders, special interest groups, interested members of the public, and local, State, and Federal agencies. The letter decribed the proposed action, the environmental analysis, and the scope of the decision to be made. Additionaly, the letter solicited public participation in the process, specifically the submission of comments, concerns, and recommendations regarding the management of grazing allotments within the project area. News releases were also made to encourage public comments and input into the project. The scoping process is used to assist the forest in identifying specific issues to be addressed related to the purpose and need and the scope of the decision.

Although a formal comment period is not being reopened for this NOI, comments related to the scope of the anyalysis will be accepted any time prior to the final decision being made. All previously submitted comments will be used to prepare the Draft EIS. Additional news releases will be prepared to give the pulbic general notice concerning the progress on this project analysis. Ongoing information related to the proposed action and related analysis will be posted on the Bridger-Teton National Forest Web site *http://www.fs.fed.us/r4/btnf. Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A Draft EIS will be prepared for comment. The comment period on the Draft EIS will be for a period of 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Date: April 5, 2010.

Tracy Hollingshead,

District Ranger, Kemmerer Ranger District, Bridger-Teton National Forest.

[FR Doc. 2010–8104 Filed 4–8–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in Pinetop, Arizona. The purpose of the meeting is to review and recommend funding of project proposals in accordance with Public Law 110–343 (the Secure Rural Schools and Community Self-Determination Act).

DATES: The meeting will be held April 29, 2010 starting at 10 a.m. Should this

meeting be postponed due to inclement weather, the alternate meeting date is May 6, 2010.

ADDRESSES: The meeting will be held in the conference room of the Arizona Game and Fish Department Regional Office, 2878 East White Mountain Boulevard, Pinetop, Arizona 85935. Send written comments to Julia Faith Rivera, Coordinator, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to *jfrivera@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Julia Faith Rivera, Apache-Sitgreaves National Forests, (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and opportunity for public input will be provided. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring PL 110–343 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: April 5, 2010.

Chris Knopp,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 2010–8120 Filed 4–8–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Perspective, (5) Project Presentations, (6) Next Agenda.

DATES: The meeting will be held on April 22, 2010 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Pine Room, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1269; e-mail *rjero@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 19, 2010 will have the opportunity to address the committee at those sessions.

Dated: April 5, 2010.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2010–8121 Filed 4–8–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Central Idaho Resource Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Central Idaho RAC will meet in Jerome, Idaho. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to discuss with the County Commissioners arid Sawtooth National Forest District Rangers operating principles and project proposals.

DATES: The meeting will be held May 17, 2010 from 1:30 p.m.–3:30 p.m.

ADDRESSES: The meeting will be held at The Idaho Fish and Game Regional Office, 319 S 417 E, Hwy 93 Business Park, Jerome, Idaho 83338. Written comments should be sent to Sawtooth National Forest, Attn: Julie Thomas, 2647 Kimberly Road East, Twin Falls, Idaho 83301. Comments may also be sent via e-mail to *jathomas@fs.fed.us,* or via facsimile to 208–737–3236

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at The Sawtooth National Forest Supervisors Office at 2647 Kimberly Road East, Twin Falls, Idaho 83301. Visitors are encouraged to call ahead to 208–737–3200 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Thomas, Designated Federal Official, Sawtooth National Forest, 208–737–3200.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: This Resource Advisory Council meeting will specifically deal with Operating principles and project proposals that the RAC will use to implement the business of the RAC. The agenda for the meeting can be found at *http://www.fs.fed.us/r4/sawtooth/.* Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by May 10, 2010 will have the opportunity to address the Committee at those sessions.

Dated: April 1, 2010.

Julie Thomas,

Designated Federal Officer.

[FR Doc. 2010–7914 Filed 4–8–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Wetlands Reserve Enhancement Program

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of availability of program funds.

SUMMARY: The Natural Resources Conservation Service (NRCS), on behalf of the Commodity Credit Corporation (CCC), announces that a minimum of $25 million in financial assistance will be made available in fiscal year (FY) 2010 for the Wetlands Reserve Enhancement Program (WREP) throughout the United States to eligible landowners.

Under WREP, NRCS enters into agreements with eligible partners to help enhance conservation outcomes on wetlands and adjacent lands. WREP targets and leverages resources to carry out high priority wetland protection, restoration, and enhancement activities and improve wildlife habitat through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, and Indian tribes. This notice is to

solicit proposals from potential partners who seek to enter into agreements with NRCS under this authority and to inform landowners of the potential availability of program funds through approved projects.

DATES: *Effective Date:* The notice of request is effective April 9, 2010.

Eligible partners may submit proposals to the NRCS State office by mail or via courier.

- *By mail:* Proposals must be postmarked by May 24, 2010.
- *By courier or hand delivery:* Proposals must be delivered by May 24, 2010.

ADDRESSES: Written proposals for projects geographically located within a State should be sent to the appropriate NRCS State Conservationist, whose names and addresses are identified as an attachment to this notice. Written proposals for multi-State projects are to be sent to the NRCS State Conservationist of the State in which the majority of the proposed project area resides. All proposals hand-delivered by courier will be accepted between 9 a.m. and 4 p.m., local time, Monday through Friday, except Federal holidays.

Note: Proposals submitted via fax, e-mail, through the grants.gov Web site, or after the deadline date listed in this notice will not be considered.

FOR FURTHER INFORMATION CONTACT: Garry Lee, Acting Director, Easement Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6819 South Building, Washington, DC 20250, *Telephone:* (202) 720–0907 or *Fax:* (202) 720–9689.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 2206 of the Food, Conservation, and Energy Act of 2008 (2008 Act) establishes the WREP by amending section 1237A(h) of the Food Security Act of 1985 (16 U.S.C. 3837a(h)). The Secretary of Agriculture delegated authority for WREP to the Chief of NRCS, who is Vice President of the CCC.

Availability of Funding

Effective upon publication of this notice, NRCS, on behalf of CCC, announces that a minimum of $25 million of financial assistance funds is available to accept high quality proposals under WREP in FY 2010. Under WREP, NRCS enters into agreements with eligible State and local governments, Indian tribes, and nongovernmental organizations. The reserve rights pilot of WREP (7 CFR 1467.9(b)) is implemented separately, and funds for the pilot are made available through the normal Wetlands Reserve Program (WRP) allocation process. NRCS will announce, at the State level, when a pilot area has been selected for the reserved rights pilot and will provide enrollment information to landowners at that time.

Overview

WREP is a voluntary conservation program which is a component of WRP. WREP leverages resources of eligible partners to provide financial and technical assistance to eligible landowners to protect, restore, and enhance high priority wetlands and improve wildlife habitat. WREP partners are required to contribute a financial match of at least 5 percent of the acquisition or restoration costs toward the project. Proposals which include additional partner resources will be given higher priority consideration in the selection process. Contributions provided by the partners to achieve additional points can be in the form of technical or financial assistance for the protection, restoration, and enhancement of the wetland. They can also be used for management and monitoring activities. These contributions can be in-kind services or cash.

WREP financial and technical assistance is delivered to eligible landowners in approved project areas through easement acquisition, conservation program contracts, cooperative agreements, contribution agreements, or Federal contracts. Restoration may be achieved through payments to other parties who conduct the restoration activities.

Only States and local units of government, Indian tribes, and nongovernmental organizations are eligible to submit a proposal and enter into agreements with NRCS. A nongovernmental organization is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986. Individual landowners may not submit WREP proposals through this submission process. However, once a WREP project has been approved and announced, eligible landowners may apply for WREP through their local NRCS office. As part of the agreement, approved partners may also help facilitate the submission of landowner applications, provide additional technical or financial assistance to landowners, and provide other resources as defined in the agreement.

Written proposals are to be submitted by eligible partners, and project evaluation will be based upon a competitive process and the criteria established in this notice. Potential partners may submit WREP proposals for an individual landowner project, watershed, or geographic area to the appropriate State Conservationist. Once NRCS selects a partner's proposal, landowners within the selected project area may submit an application directly to NRCS for participation in WRP. Individual landowner applications will be evaluated and ranked among other applicants in the watershed or geographic project area, when applicable, to ensure that the properties selected for funding will achieve project objectives.

Wetland restoration and enhancement actions will be designed to maximize wildlife habitat values and water quality according to the WRP regulation, 7 CFR part 1467, and NRCS standards and specifications. Proposals must conform to the WRP guidelines for restoration and management of lands subject to a WRP easement.

Benefits to the partners in WREP agreements include:

- Involvement in wetland restorations in high priority areas;
- Ability to cost-share restoration or enhancement components beyond those required by NRCS;
- Ability to participate in management or monitoring of selected project locations; and
- Opportunity to utilize innovative restoration methods and practices.

Proposal Requirements

For consideration, the proposal must be in the following format and contain the information set forth below:

Proposal Format: The basic format for the WREP proposal is a narrative written response to the information requested in this notice. There are no forms required or associated with the WREP proposal submission process; however, the proposal must include all of the following:

(1) *Proposal Cover Sheet and Summary:* The first few pages of the proposal must include:

(a) Project Title.

(b) Project Director/Manager name, telephone, and email address.

(c) Name of lead partner submitting proposal and other collaborating partners.

(d) Mailing address and telephone numbers for lead partner.

(e) Short general description/summary of project.

(f) Potential acres to be enrolled in the project area.

(g) The geographic location including State(s), county(s), and congressional district(s). Include a general location map.

(h) Proposed project start and end dates (not to exceed a period of 5 years).

(i) Total budget for the project including the amount of WREP financial assistance being requested for project.

(2) *Project Natural Resource Objectives and Actions:* The proposal must:

(a) Identify and provide detail about the natural resource concern(s) to be addressed and how the proposal's objectives will address those concerns. Objectives should be specific, measurable, achievable, results-oriented, and include a timeline for completion.

(b) For each objective, identify the actions to be completed to achieve that objective and address the identified natural resource concern. Specify which actions are to be addressed through this project using WREP assistance, and which are being addressed through alternate non-Federal funding sources or other resources provided.

(c) Identify the total acres that require wetland protection, restoration, and enhancement.

(3) *Detailed Proposal Criteria:* Information provided in the proposal must include:

(a) A description of the partner(s) history of working with landowners to address resource issues.

(b) A description of the watershed characteristics within the designated focus area covered by the proposal including a detailed watershed map which indicates the project location. The description should include information related to land use types, vegetation, soils, hydrology, potential sources of water quality impairments, occurrences of at-risk species, proximity to other protected areas, and a summary of resource concerns.

(c) A description of the partner(s) and the roles, responsibilities, and capabilities of the partner(s). Proposals which include resources from partners other than the lead partner must include a letter or other documentation confirming the commitment of resources.

(d) A description of the project duration, plan of action, and project implementation schedule. Project proposals cannot exceed 5 years.

(e) A description of the financial assistance resources that are requested through WREP, and the non-Federal resources provided by the partner(s) that will be leveraged by the Federal contribution. WREP partners are required to contribute a financial match of at least 5 percent of the acquisition or restoration costs toward the project.

(f) A description of non-Federal resources that will be available for implementation of the proposal. Proposals which include additional non-Federal resources will be given higher consideration in the selection process. The partner needs to state clearly how they intend to leverage Federal funds along with partner resources. Landowner contributions in the implementation of agreed-to wetland restoration and enhancement practices may not be considered any part of a match from the potential partner for purposes of WREP. Partners will also be required to submit a plan for monitoring, evaluating, and reporting progress made toward achieving the objectives of the agreement.

(g) An estimate of the percentage of potential landowners, or estimate of the percentage of acres likely to be enrolled within the project area, compared to the total number of potential landowners or acres located in the project area. A statement on how the partner will encourage participation to guarantee success of the project. It is not necessary for a target area to involve multiple landowners to be selected. Projects will be evaluated based on the ecological merits of the proposal and contributions by the partners.

(h) A statement describing how the partner will provide outreach, especially to encourage participation by Indian tribes, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and limited resource farmers or ranchers.

(i) A description of the wetland protection, restoration, and enhancement activities to be implemented during the project timeframe, and the general sequence of implementation of the project. Activities may include those efforts undertaken by the partner and those that the partner requests NRCS to address through financial support.

(j) A description of the amount of funds needed annually for easement acquisition and wetland restoration and enhancement activities.

Submitting Proposals

Potential partners must submit a complete proposal to the appropriate NRCS State Conservationist by the date and time listed at the beginning of this notice addressing all items listed in the "Proposal Requirements" section of this notice. More than one proposal may be submitted. Potential partners should recognize that the proposal is the only document NRCS will use in the evaluation process. The proposal must include sufficient detail to allow NRCS to understand the partner's priority resource concerns, objectives, and expected outcomes. If a project is multi-State in scope, the proposal should be sent to the State Conservationist of the State in which the majority of the project area resides. Incomplete proposals and those that do not meet the requirements set forth in this notice will not be considered, and notification of elimination will be mailed to the applicant.

The potential partner must submit five copies of the proposal, typewritten or printed on 8½″ x 11″ white paper. One additional copy of the proposal must be in electronic format, such as Microsoft Word or PDF on one CD–ROM. If submitting more than one project proposal, submit a separate document for each project. The entire project proposal must not to exceed 15 pages in length including summary, responses to the information requested for the Project Natural Resource Objectives and Actions and Detailed Project Criteria, maps, reference materials, and related reports.

State Conservationists may provide guidance to potential partners regarding resource concerns that may be addressed in the proposed project area, local working group and State Technical Committee natural resource priorities, and approved wetland restoration and enhancement practices and activities the partner should consider.

Note: All WREP proposals submitted to the State Conservationist become the property of NRCS for use in the administration of the program, may be filed or disposed of by the agency, and will not be returned to the potential partner. Once proposals have been submitted to the agency for review and ranking, there will be no further opportunity to change or re-submit the proposal document.

State Conservationist Review of Proposal

The State Conservationist(s) will review the proposals to address:

(a) Potential duplication of efforts with other projects or existing programs;

(b) Adherence to, and consistency with, program regulation including requirements related to land and landowner eligibility and other program requirements;

(c) Expected benefits for project implementation in their State(s);

(d) Other issues or concerns the State Conservationist is aware that should be considered; and

(e) A general recommendation for support or denial of project approval.

National Ranking Considerations

The appropriate State Conservationist will evaluate proposals using a competitive process and forward recommended proposals to the Chief or designee for review and selection. The Chief or designee will give a higher priority to proposals that:

(a) Have a high potential to achieve wetland restoration;

(b) Have a high potential to significantly improve wildlife habitat;

(c) Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, tribal, or Federal efforts;

(d) Demonstrate the partner's history of working cooperatively with landowners;

(e) Provide innovation in wetland protection, restoration, and enhancement methods and outcome-based performance measures and methods;

(f) Provide evidence that wetland restoration and enhancement activities will be completed within 2 years of easement closing;

(g) Provide for monitoring and evaluation of the effectiveness of the restoration activities;

(h) Provide for matching financial or technical assistance funds to assist landowners with the implementation of the Wetlands Reserve Plan of Operations and associated contracts;

(i) Facilitate the submission of landowner applications; and

(j) Provide for outreach to, and participation of, Indian tribes, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, and limited resource farmers or ranchers within the area covered by the agreement.

Acknowledgement of Submission and Notifications

Partners whose proposals have been selected will receive a letter of official notification. Upon notification of selection, the partner should contact the NRCS State Conservationist listed in the letter to develop the required agreement and other project implementation requirements. Partner submissions of proposals that were not selected will be notified by mail.

Withdrawal of Proposals

Partner proposals may be withdrawn by written notice to the applicable State Conservationist at any time prior to selection.

Partnership Agreements

Upon proposal selection, NRCS will enter an agreement with a partner as the mechanism for partner participation in WREP. At a minimum, the agreement will address:

(a) The role of the partner;

(b) The role of NRCS;

(c) The format and frequency of reports that are required as a condition of the agreement;

(d) Plan of Work and budget to identify other funding sources (if applicable) for financial or technical assistance;

(e) The specified project schedule and timeframe; and

(f) Other requirements deemed necessary by NRCS to achieve purposes of the WRP.

Landowner Application

Landowners must meet the eligibility requirements of WRP, as published in 7 CFR part 1467. Landowners interested in participating may apply for designated WREP funds at their local service center after WREP proposals are selected. In FY 2010, NRCS will make WREP funds available to eligible landowners to enroll land under a permanent easement, a 30-year easement, or a 30-year contract on acreage owned by Indian tribes.

NRCS and the partner may assist landowners in determining whether the application is appropriate for WREP depending on the wetland protection, restoration, and enhancement activities that the applicant seeks to install or perform.

Land Eligibility

The land eligibility criteria for WREP are the same as for WRP and are listed in 7 CFR § 1467. 4.

Waiver Authority

To assist in the implementation of WREP projects, the Chief may waive the applicability of the Adjusted Gross Income Limitation, on a case-by-case basis, in accordance with 7 CFR part 1400. Such waiver requests must be submitted in writing from the program applicant, addressed to the Chief, and submitted through the local NRCS designated conservationist.

Signed this April 5, 2010, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

United States Department of Agriculture

Natural Resources Conservation Service

State Conservationists

AL—William E. Puckett
3381 Skyway Drive
P.O. Box 311
Auburn, Alabama 36830
Phone: 334/887–4500
Fax: 334/887–4552
(V) 9027–4557
(E) *william.puckett@al.usda.gov*

AK—Robert Jones
800 West Evergreen
Atrium Building, Suite 100
Palmer, Alaska 99645–6539
Phone: 907/761–7760
Fax: 907/761–7790
(V) 9035–2227
(E) *robert.jones@ak.nrcs.usda.gov*

AZ—David L. McKay
230 North First Avenue
Suite 509
Phoenix, Arizona 85003–1706
Phone: 602/280–8801
Fax: 602/280–8809 or 8805
(V) 9011–8810
(E) *david.mckay@az.nrcs.usda.gov*

AR—Michael E. Sullivan
Federal Building, Room 3416
700 West Capitol Avenue
Little Rock, Arkansas 72201–3228
Phone: 501/301–3100
Fax: 501/301–3194
(V) 9044–3110
(E) *michael.sullivan@ar.usda.gov*

CA—Lincoln E. (Ed) Burton
430 G Street
Suite 4164
Davis, California 95616–4164
Phone: 530/792–5600
Fax: 530/792–5790
(V) 9040–5601
(E) *ed.burton@ca.usda.gov*

CO—Allen Green
655 Parfet Street
Room E200C
Lakewood, Colorado 80215–5521
Phone: 720–544–2810
Fax: 720–544–2965
(V) 9059–2802
(E) *allen.green@co.usda.gov*

CT—Douglas Zehner
344 Merrow Road, Suite A
Tolland, Connecticut 06084
Phone: 860/871–4011
Fax: 860/871–4054
(V) 9013–114
(E) *douglas.zehner@ct.usda.gov*

DE—Russell Morgan
1221 College Park Drive, Suite 100
Dover, Delaware 19904–8713
Phone: 302/678–4160
Fax: 302/678–0843
(V) 9060–199
(E) *russell.morgan@de.usda.gov*

FL—Carlos Suarez
2614 NW. 43rd Street
Gainesville, Florida 32606–6611 or
P.O. Box 141510, Gainesville, FL 32614
Phone: 352/338–9500
Fax: 352/338–9574
(V) 9012–3501
(E) *carlos.suarez@fl.usda.gov*

GA—James Tillman
Federal Building, Stop 200
355 East Hancock Avenue
Athens, Georgia 30601–2769
Phone: 706/546–2272

Fax: 706/546–2120
(V) 9021–2082
(E) *james.tillman@ga.usda.gov*

GU—Lawrence T. Yamamoto
Director, Pacific Basin Area
FHB Building, Suite 301
400 Route 8
Mongmong, Guam 96910
Phone: 671/472–7490
Fax: 671/472–7288
(V) 9000–822–1265
(E) *larry.yamamoto@pb.usda.gov*

HI—Lawrence T. Yamamoto
300 Ala Moana Blvd., Room 4–118
P.O. Box 50004
Honolulu, Hawaii 96850–0002
Phone: 808/541–2600 x107
Fax: 808/541–1335
(V) 9042–108
(E) *larry.yamamoto@hi.nrcs.usda.gov*

ID—Jeffrey B. Burwell
9173 West Barnes Drive
Suite C
Boise, Idaho 83709
Phone: 208/378–5700
Fax: 208/378–5735
(V) 9000–291–4551
(E) *jeffrey.burwell@id.usda.gov*

IL—William J. Gradle
2118 W. Park Court
Champaign, Illinois 61821
Phone: 217/353–6601
Fax: 217/353–6676
(V) 9057–6601
(E) *bill.gradle@il.usda.gov*

IN—Jane E. Hardisty
6013 Lakeside Blvd.
Indianapolis, Indiana 46278–2933
Phone: 317/290–3200
Fax: 317/290–3225
(V) 9029–301
(E) *jane.hardisty@in.usda.gov*

IA—Richard Sims
693 Federal Building
210 Walnut Street, Suite 693
Des Moines, Iowa 50309–2180
Phone: 515/284–6655
Fax: 515/284–4394
(V) 9000–945–1065
(E) *richard.sims@ia.usda.gov*

KS—Kasey Taylor, Acting
Eric B. Banks
760 South Broadway
Salina, Kansas 67401–4642
Phone: 785/823–4565
Fax: 785/452–3369
(V) 9000–345–8770
(E) *eric.banks@ks.usda.gov*

KY—Tom Perrin
771 Corporate Drive
Suite 110
Lexington, Kentucky 40503–5479
Phone: 859/224–7350
Fax: 859/224–7399
(V) 9032–7390
(E) *tom.perrin@ky.usda.gov*

LA—Kevin D. Norton
3737 Government Street
Alexandria, Louisiana 71302
Phone: 318/473–7751
Fax: 318/473–7626
(V) 9000–965–1635
(E) *kevin.norton@la.usda.gov*

ME—Juan Hernandez
967 Illinois Avenue
Suite #3
Bangor, Maine 04401
Phone: 207/990–9100, ext. #3
Fax: 207/990–9599
(V) 9000–757–1028
(E) *juan.hernandez@me.usda.gov*

MD—Jon F. Hall
John Hanson Business Center
339 Busch's Frontage Road, Suite 301
Annapolis, Maryland 21401–5534
Phone: 410/757–0861 x315
Fax: 410/757–0687
(V) 9053–315
(E) *jon.hall@md.usda.gov*

MA—Christine Clarke
451 West Street
Amherst, Massachusetts 01002–2995
Phone: 413/253–4351
Fax: 413/253–4375
(V) 9047–4352
(E) *Christine.clarke@ma.usda.gov*

MI—Salvador Salinas, Acting
Garry D. Lee
3001 Coolidge Road, Suite 250
East Lansing, Michigan 48823–6350
Phone: 517/324–5270
Fax: 517/324–5171
(V) 9048–5277
(E) *garry.lee@mi.usda.gov*

MN—Jennifer Heglund, Acting
375 Jackson Street
Suite 600
St. Paul, Minnesota 55101–1854
Phone: 651/602–7900
Fax: 651/602–7913 or 7914
(V) 9041–7854
(E) *Jennifer.heglund@mn.usda.gov*

MS—Homer Wilkes
Suite 1321, Federal Building
100 West Capitol Street
Jackson, Mississippi 39269–1399
Phone: 601/965–5205
Fax: 601/965–4940
(V) 9000–965–2065
(E) *homer.wilkes@ms.nrcs.usda.gov*

MO—J.R. Flores
Parkade Center, Suite 250
601 Business Loop 70 West
Columbia, Missouri 65203–2546
Phone: 573/876–0901
Fax: 573/876–9439
(V) 9034–1367
(E) *jr.flores@mo.usda.gov*

MT—Joyce Swartzendruber
Federal Building, Room 443
10 East Babcock Street
Bozeman, Montana 59715–4704
Phone: 406/587–6813
Fax: 406/587–6761
(V) 9056–6813
(E) *joyce.swartzendruber@mt.usda.gov*

NE—Stephen K. Chick
Federal Building, Room 152
100 Centennial Mall, North
Lincoln, Nebraska 68508–3866
Phone: 402/437–5300
Fax: 402/437–5327
(V) 9026–4103
(E) *steve.chick@ne.usda.gov*

NV—Bruce Petersen
5301 Longley Lane
Building F, Suite 201
Reno, Nevada 89511–1805
Phone: 775/857–8500
Fax: 775/857–8524
(V) 9000–784–1390
(E) *bruce.petersen@nv.usda.gov*

NH—George Cleek
Federal Building
2 Madbury Road
Durham, New Hampshire 03824–2043
Phone: 603/868–7581 ext. 125
Fax: 603/868–5301
(V) 9000–868–8035
(E) *george.cleek@nh.usda.gov*

NJ—Thomas Drewes
220 Davidson Avenue
Somerset, New Jersey 08873
Phone: 732/537–6040
Fax: 732/537–6095
(V) 9000–767–1000
(E) *tom.drewes@nj.usda.gov*

NM—Dennis L. Alexander
6200 Jefferson Street, NE.
Suite 305
Albuquerque, New Mexico 87109–3734
Phone: 505/761–4402 (Rita)
Fax: 505/761–4481
(V) 9016–4401
(E) *dennis.alexander@nm.usda.gov*

NY—Astor Boozer
441 South Salina Street
Suite 354
Syracuse, New York 13202–2450
Phone: 315/477–6504
Fax: 315/477–6550
(V) 9015–6501
(E) *astor.boozer@ny.usda.gov*

NC—J.B. Martin, Acting
4405 Bland Road, Suite 205
Raleigh, North Carolina 27609–6293
Phone: 919/873–2102
Fax: 919/873–2156
(V) 9025–2101
(E) *JB.martin@nc.usda.gov*

ND—Paul Sweeney
220 E. Rosser Avenue, Room 278
P.O. Box 1458
Bismarck, North Dakota 58502–1458
Phone: 701/530–2000
Fax: 701/530–2110
(V) 9051–2003
(E) *paul.sweeney@nd.usda.gov*

OH—Terry J. Cosby
200 North High Street, Room 522
Columbus, Ohio 43215–2478
Phone: 614/255–2472
Fax: 614/255–2548
(V) 9000–881–1870
(E) *terry.cosby@oh.usda.gov*

OK—Ronald L. Hilliard
100 USDA, Suite 206
Stillwater, Oklahoma 74074–2655
Phone: 405/742–1204
Fax: 405/742–1126
(V) 9037–1280
(E) *ron.hillard@ok.usda.gov*

OR—Ron Alvarado
101 SW Main Street
Suite 1300
Portland, Oregon 97204–3221
Phone: 503/414–3200
Fax: 503/414–3103
(V) 9019–3201
(E) *ron.alvarado@or.usda.gov*

PA—Dave Brown, Acting
1 Credit Union Place, Suite 340

Harrisburg, Pennsylvania 17110–2993
Phone: 717/237–2203
Fax: 717/237–2238
(V) 9039–2203
(E) *dave.brown@pa.usda.gov*

PR—Angel Figueroa, Acting
Director, Caribbean Area
IBM Building, Suite 604
654 Munoz Rivera Avenue
Hato Rey, Puerto Rico 00918–4123
Phone: 787/766–5206, ext. 237
Fax: 787/766–5987
(V) 9000–769–1030
(E) *angel.figueroa@wdc.usda.gov*

RI—Richard "Pooh" Vongkhamdy
60 Quaker Lane, Suite 46
Warwick, Rhode Island 02886–0111
Phone: 401/828–1300
Fax: 401/828–0433
(V) 9023–115
(E) *pooh.vongkhamdy@ri.usda.gov*

SC—Keisha Brown, Acting
Strom Thurmond Federal Building
1835 Assembly Street, Room 950
Columbia, South Carolina 29201–2489
Phone: 803/253–3935
Fax: 803/253–3670
(V) 9031–3940
(E) *Keisha.brown@sc.usda.gov*

SD—Janet L. Oertly
Federal Building, Room 203
200 Fourth Street, S.W.
Huron, South Dakota 57350–2475
Phone: 605/352–1200
Fax: 605/352–1288
(V) 9036–1201
(E) *janet.oertly@sd.usda.gov*

TN—Kevin Brown
675 U.S. Courthouse
801 Broadway
Nashville, Tennessee 37203–3878
Phone: 615/277–2531
Fax: 615/277–2578
(V) 9058–2530
(E) *kevin.brown@tn.usda.gov*

TX—Donald W. Gohmert
W.R. Poage Federal Building
101 South Main Street
Temple, Texas 76501–7602
Phone: 254/742–9800
Fax: 254/742–9819
(V) 9038–9803
(E) *don.gohmert@tx.usda.gov*

UT—Sylvia A. Gillen
W.F. Bennett Federal Building
125 South State Street, Room 4402
Salt Lake City, Utah 84111
Phone: 801/524–4555
Fax: 801/524–4403
(V) 9000–625–1550
(E) *sylvia.gillen@ut.usda.gov*

VT—Judith M. Doerner
356 Mountain View Drive, Suite 105
Colchester, Vermont 05446
Phone: 802/951–6795
Fax: 802/951–6327
(V) 9000–768–1240
(E) *judy.doerner@vt.usda.gov*

VA—Vicky Drew, Acting
Jack Bricker
Culpeper Building, Suite 209
1606 Santa Rosa Road
Richmond, Virginia 23229–5014
Phone: 804/287–1691
Fax: 804/287–1737
(V) 9003–1682
(E) *jack.bricker@va.usda.gov*

WA—Roylene Rides at the Door
Rock Pointe Tower II
W. 316 Boone Avenue, Suite 450
Spokane, Washington 99201–2348
Phone: 509/323–2900
Fax: 509/323–2909
(V) 9035–2901
(E) *door@wa.usda.gov*

WV—Kevin Wickey
75 High Street, Room 301
Morgantown, West Virginia 26505
Phone: 304/284–7540
Fax: 304/284–4839
(V) 9049–7542
(E) *kevin.wickey@wv.usda.gov*

WI—Ivan Dozier, Acting
Patricia Leavenworth
8030 Excelsior Drive, Suite 200
Madison, Wisconsin 53717
Phone: 608/662–4422
Fax: 608/662–4430
(V) 9018–222
(E) *pat.leavenworth@wi.usda.gov*

WY—J. Xavier Montoya
Federal Building, Room 3124
100 East B Street
Casper, Wyoming 82601–1911
Phone: 307/233–6750
Fax: 307/233–6753
(V) 9000–951–1015
(E) *Xavier.montoya@wy.usda.gov*

[FR Doc. 2010–8143 Filed 4–8–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms from India: Notice of Amended Final Results Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 8, 2008, the United States Court of International Trade (CIT) sustained the results of redetermination made by the Department of Commerce (the Department) pursuant to the CIT's remand in *Agro Dutch Industries Limited v. United States*, Slip Op. 07–185 (CIT December 26, 2007) (*Agro Dutch II*). See Agro Dutch Industries Limited v. United States, Slip Op. 08–50 (CIT May 8, 2008) (Agro Dutch III). Subsequent to the CIT's judgment upholding Commerce's remand redetermination, in October 2008, the CIT exercised its equitable power to order reliquidation of some of Agro Dutch's entries. *See Agro Dutch Industries Limited v. United States*, Slip Op. 08–110 (CIT October 17, 2008) (*Agro Dutch IV*). The Government appealed the CIT's decision in *Agro Dutch IV* to the United States Court of Appeals for the Federal Circuit (CAFC), and on December 15, 2009, the CAFC affirmed the CIT's decision. *See Agro Dutch Industries Limited v. United States*, Slip Op. 2009–1127 (Fed.Cir. December 15, 2009) (*Agro Dutch V*). As there is now a final and conclusive court decision in this case, the Department is amending the final results of the 2000–2001 administrative review of certain preserved mushrooms from India.

EFFECTIVE DATE: April 9, 2010.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Katherine Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 2002, the Department issued its final results in the antidumping duty administrative review of certain preserved mushrooms from India covering the period of review of February 1, 2000, through January 31, 2001. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 67 FR 46172 (July 12, 2002), and accompanying Issues and Decisions Memorandum (*Final Results*). Agro Dutch challenged certain aspects of the Department's *Final Results*: (1) that the use of partial facts available and adverse inferences for certain of its sales was improper; (2) that the methodology used to determine Agro Dutch's constructed value was in error; (3) that the calculation of its imputed credit expenses was in error; and (4) that its entries were improperly and prematurely liquidated.

In *Agro Dutch Industries Limited v. United States*, Slip Op. 07–25 (CIT February 16, 2007) (*Agro Dutch I*), the CIT upheld the Department's determinations on issues (2) and (3) regarding constructive value and imputed credit expense methodologies. However, with respect to the first issue, that the use of partial facts available and adverse inferences for certain of Agro Dutch's sales was improper, the CIT instructed the Department on remand to revisit its determination.

On March 3, 2007, the Department filed its remand redetermination and further explained its use and application of facts available in this review. In Agro Dutch II, the CIT did not accept the Department's explanation

and again remanded the case to the Department.

On April 3, 2008, the Department issued its final results of redetermination pursuant to *Agro Dutch II*. The remand redetermination explained that, in accordance with the CIT's instructions, the Department analyzed the information on the record and made its determination for certain Agro Dutch sales on the basis of facts available without imputing an adverse inference. The Department's redetermination resulted in a change to the *Final Results* weighted–average margin for Agro Dutch from 27.80 percent to 1.54 percent. The CIT sustained the Department's remand redetermination on May 8, 2008. *See Agro Dutch III*. On May 23, 2008, consistent with the decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's decision was not in harmony with the Department's *Final Results. See Certain Preserved Mushrooms from India: Notice of Court Decision Not in Harmony with Final Results of Administrative Review*, 73 FR 30051 (May 23, 2008).

Subsequent to the CIT's judgment upholding Commerce's remand redetermination, in October 2008, the CIT exercised its equitable power to order reliquidation of some of Agro Dutch's entries. Specifically, the CIT amended the effective date of the injunction retroactively to the date the CIT granted the injunction (*i.e.*, October 1, 2002) and ordered that Agro Dutch's entries of subject merchandise that were liquidated on or after October 1, 2002, pursuant to the Department's *Final Results*, be reliquidated in accordance with the CIT's judgment in *Agro Dutch III. See Agro Dutch IV.*

The Government appealed the CIT's decision in *Agro Dutch IV* to the CAFC and on December 15, 2009, the CAFC affirmed the CIT's decision. *See Agro Dutch V*. Because there is now a final and conclusive court decision in this case, the Department is amending the final results of the 2000–2001 administrative review.

Amended Final Results of Review

We are amending the final results of the 2000–2001 administrative review of the antidumping duty order on certain preserved mushrooms from India to reflect the results of our remand redetermination. Specifically, the Department's redetermination resulted in changes to the *Final Results* weighted–average margin for Agro Dutch from 27.80 percent to 1.54 percent.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries for this review in accordance with these amended final results of review. Additionally, pursuant to the CIT's decision in *Agro Dutch IV*, as affirmed by the CAFC, the Department will instruct CBP to reliquidate, in accordance with these amended final results of review, Agro Dutch's entries of subject merchandise that were liquidated on or after October 1, 2002, pursuant to the *Final Results*. We intend to issue the assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–8164 Filed 4–8–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot–Rolled Carbon Steel Flat Products from India: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2010, the U.S. Department of Commerce ("the Department") published a notice of preliminary results of the administrative review of the countervailing duty order on certain hot–rolled carbon steel flat products from India covering the period January 1, 2008, through December 31, 2008. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 1496 (January 11, 2010). Therefore, the final results were originally due no later than May 11, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final results of this review is now May 18, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a final determination within 120 days after the date on which the preliminary results is published. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 120-day period to issue its final results to up to 180 days.

Due to the issues in this administrative review, such as the number and complexity of programs under review during the POR, we have determined that it is not practicable to complete the final results within the 120-day period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of the review by 60 days. The final results are now due no later than July 17, 2010. However, because July 17, 2010, falls on a weekend, the actual due date will be the first business day following the weekend, *i.e.*, July 19, 2010.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: April 5, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–8158 Filed 4–8–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1785 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, the Department of Commerce ("Department") published in the **Federal Register** the initiation of administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan, covering the period June 1, 2008, through May 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 37690 (July 29, 2009). The preliminary results for this administrative review were due no later than March 9, 2010.[1] On March 4, 2010, the Department extended the time limit for completion of the preliminary results by 30 days to April 8, 2010, because it needed additional time to analyze additional information regarding a respondent's entries that had been placed on the record. *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 11119 (March 10, 2010).

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The review covers four manufacturers/exporters: JFE Steel Corporation; Nippon Steel Corporation; NKK Tubes; and Sumitomo Metal Industries, Ltd. These four manufacturers/exporters submitted letters to the Department certifying that they made no shipments or entries for consumption in the United States of the subject merchandise during the period of review ("POR"). In response to the Department's query to U.S. Customs and Border Protection ("CBP"), CBP data showed POR entries for consumption of subject merchandise that were manufactured by one of the respondent companies. The information regarding these entries has been placed on the record of this review under the terms of the administrative protective order. The Department solicited additional information and comments regarding these entries.

On March 31, 2010, CBP notified the Department that there were additional POR entries for consumption of the subject merchandise manufactured by one of the four respondent companies. The Department is awaiting documentation for these entries.

Because the Department requires additional time to analyze this new information, it is not practicable to complete this review within the initial time extension of April 8, 2010. Therefore, the Department is further extending the time limit for completion of the preliminary results by an additional 90 days to July 7, 2010, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 5, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–8163 Filed 4–8–10; 8:45 am]

BILLING CODE 3510–DS–S

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. As a result, all deadlines in this segment of the proceeding have been extended by seven days, and the revised deadline for the preliminary determination became March 9, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 9, 2010.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the countervailing duty order on corrosion–resistant carbon steel flat products (CORE) from Korea. *See Countervailing Duty Orders and Amendments of Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea*, 58 FR 43752 (August 17, 1993). On August 3, 2009, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 38397 (August 3, 2009). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review on September 22, 2009, for the 2008 period of review (POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009). The preliminary results for this review were originally due no later than May 3, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines

for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now May 10, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

In this administrative review, there are complex issues regarding several research and development programs. Because the Department will require additional time to review and analyze the supplemental information recently received and may issue further supplemental questionnaires, it is not practicable to complete this review within the originally anticipated time limit (i.e., by May 10, 2010). Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to not later than September 7, 2010, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 5, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–8148 Filed 4–8–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802, A–570–893]

Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") has received requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam") and the People's Republic of China ("PRC"). The Department received timely requests to revoke, in part, the antidumping duty order on shrimp from Vietnam for multiple producers/exporters.[1] The anniversary month of this order is February. In accordance with the Department's regulations, we are initiating these administrative reviews.

DATES: *Effective Date:* April 9, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit and Jerry Huang (Vietnam) at (202) 482–4031 and (202) 482–4047, respectively, and Catherine Bertrand (PRC) at (202) 482–3207; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp from Vietnam and the PRC covering multiple entities. The Department is now initiating administrative reviews of these orders covering those entities.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review ("POR") listed below. If a producer or exporter named in this notice of initiation had no exports, sales or entries during the POR, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the "Act"). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of this initiation notice, and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject

[1] These companies are: Camau Frozen Seafood Processing Import Export Corporation ("Camimex"), Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest"), and Phuong Nam Company Ltd. ("Phuong Nam").

merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the antidumping duty administrative reviews of frozen warmwater shrimp from Vietnam and the PRC must timely file, as appropriate, either a separate-rate application or certification, as described below. In order to demonstrate separate-rate eligibility, entities for which a review was requested and which were assigned a separate rate in the most recently completed segment of this proceeding in which they participated, must timely file a separate rate certification that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this notice in the **Federal Register.** In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications must be received by the Department no later than 30 calendar days after publication of this notice in the **Federal Register.** The deadline and requirement for submitting the Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of this proceeding,[2] must timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this notice in the **Federal Register.** In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications must be received by the Department no later than 60 calendar days after publication of this notice in the **Federal Register.** The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Firms that submit a Separate Rate Application or a Separate Rate Certification that are subsequently selected as mandatory respondents will no longer be eligible for consideration of their separate-rate status unless they respond to all parts of the antidumping duty questionnaire as mandatory respondents.

Notification

This notice constitutes public notification to all firms for which an administrative review of frozen warmwater shrimp from Vietnam and the PRC has been requested and that are seeking separate rate status in that review, that they must submit a timely Separate Rate Application or Certification (as appropriate) as described above, in order to receive consideration for separate-rate status. The Department considers those entities that do not timely submit either a separate-rate application or certification, to be part of the country-wide entity and those entities will receive the country-wide rate. All information submitted by respondents in this administrative review is subject to verification. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department may not grant any extensions of the deadlines for these submissions. As noted above, the Separate Rate Certification and the Separate Rate Application are available on the Department's web site on the date of publication of this notice in the **Federal Register** at the Web addresses noted above.

Initiation of Review

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the antidumping duty orders on frozen warmwater shrimp from Vietnam and the PRC with respect to the following companies. We intend to issue the final results of these reviews no later than February 28, 2011.

	Period to be reviewed
Antidumping Duty Proceeding	
Socialist Republic of Vietnam: [4] Frozen Warmwater Shrimp, A–552–802	02/01/2009–01/31/2010
• Agrex Saigon.	
• Amanda Foods (Vietnam) Ltd. ("Amanda Foods").	
• APL Logistics.	
• Aquatic Products Trading Company.	
• Bac Lieu Fisheries Company Limited.	
• Bac Lieu Fisheries Company Limited and/or Bac Lieu Fisheries Company Limited ("Bac Lieu").	
• Bac Lieu Fisheries Joint Stock Company ("Bac Lieu").	
• CP Livestock.	
• C.P. Vietnam Livestock Co., Ltd.	
• C.P. Vietnam Livestock Co., Ltd.	
• C.P. Vietnam Livestock Corporation.	

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (e.g., an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
• Ca Mau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 (“CAMIMEX”) and/or Camau Frozen Seafood Processing Import Export Corporation (“CAMIMEX”). • Ca Mau Seafood Joint Stock Company (“Seaprimexco Vietnam”). • Ca Mau Seafood Joint Stock Company (“SEAPRIMEXCO”). • Ca Mau Seaproducts Exploitation and Service Corporation (“SES”). • Cadovimex Seafood Import-Export and Process Joint Stock Company (“CADOVIMEX”). • Cadovimex Seafood Import-Export and Process Joint Stock Company (“Cadovimex-Vietnam”). • Cadovimex Seafood Import-Export and Process Joint Stock Company (“CADOVIMEX”) and/or Cadovimex Seafood Import-Export and Process Joint Stock Company (“Cadovimex-Vietnam”). • Cafatex Fishery Joint Stock Corporation (“Cafatex Corp.”). • Cafatex Fishery Joint Stock Corporation (“Cafatex Corp.”) and/or Cafatex Fishery Joint Stock Corporation (“CAFATEX CORP.”). • Cai Doi Vam Seafood Import-Export Company (Cadovimex). • Cam Ranh Seafoods Processing Enterprise Company (“Camranh Seafoods”). • Cam Ranh Seafoods Processing Enterprise Company (“Camranh Seafoods”) and/or Camranh Seafoods. • Camranh Seafoods Processing Enterprise Pte. (also known as Cam Ranh Seafoods Processing Enteprise Pte., Cam Ranh Seafoods Processing Enterprise Company, Cam Ranh Seafoods, and Camranh Seafoods) and its branch factory, Branch of Camranh Seafoods Processing Enterprise Pte.—Quang Ninh Export Aquatic Products Processing Factory (also known as Quang Ninh Seaproducts Factory) (collectively, “Camranh Seafoods”). • Camau Frozen Seafood Processing Import Export Corporation (“Camimex”). • Camau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 (“CAMIMEX”). • Camau Seafood Fty. • Can Tho Agricultural and Animal Product Import Export Company (“CATACO”). • Can Tho Agricultural Products. • Cantho Imp Expo Fishery Ltd. • Can Tho Agricultural and Animal Product Import Export Company (“CATACO”) and/or Can Tho Agricultural and Animal Products Import Export Company (“CATACO”). • Can Tho Animal Fisheries Product Processing Export Enterprise (Cafatex). • Can Tho Import Export Fishery Limited Company (“CAFISH”). • Can Tho Seafood Exports. • Cautre Export Goods Processing Joint Stock Company. • Coastal Fishery Development. • Coastal Fisheries Development Corporation (Cofidec). • Coastal Fisheries Development Corporation (Cofidec) and/or Coastal Fisheries Development Corporation (“COFIDEC”). • Coastal Fisheries Development Corporation (“COFIDEC”). • Cuu Long Seaproducts Limited (Cuu Long Seapro). • Cuulong Seaproducts Company (“Cuulong Seapro”). • Cuulong Seaproducts Company (“Cuu Long Seapro”) and/or Cuulong Seaproducts Company (“Cuulong Seapro”). • D & N Foods Processing Danang. • Daewoo Apparel Vietnam. • Danang Seaproducts Import Export Corporation (“Seaprodex Danang”). • Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) and/or Danang Seaproducts Import Export Corporation (and its affiliates) (“Seaprodex Danang”). • Danang Seaproducts Import Export Corporation (and its affiliate, Tho Quang Seafood Processing and Export Company) (collectively “Seaprodex Danang”). • Frozen Seafoods Factory No. 32. • Frozen Seafoods Factory No. 32 and/or Frozen Seafoods Fty. • Gallant Ocean Vietnam. • Grobest & I-Mei Industry Vietnam. • Grobest & I-Mei Industrial (Vietnam) Co., Ltd. • Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (“Grobest”). • Hai Thanh Food Company Ltd. • Hai Viet Corporation (“HAVICO”). • Hai Vuong Co., Ltd. • Hanoi Seaproducts Import Export Corporation (“Seaprodex Hanoi”). • Hatrang Frozen Seaproduct Fty. • Investment Commerce Fisheries Corporation (“Incomfish”) and/or Investment Commerce Fisheries Corporation (“INCOMFISH”). • Investment Commerce Fisheries Corporation (“Incomfish”). • Investment Commerce Fisheries Corporation (“Incomfish Corp.”). • Kaier Furniture (Vietnam) Co., Ltd. • Khanh Loi Production and Trading Co. • Kien Cuong Seafood. • Kien Gan Seaproduct Import and Export Company (“KISIMEX”). • Kien Long Seafoods. • Kim Anh Co., Ltd. • Kim Anh Company Ltd. (“Kim Anh”). • Kim Do Wood Production. • Lode Star Co., Ltd. • Minh Hai Export Frozen Seafood Processing Joint Stock Company. • Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”).	

	Period to be reviewed
• Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”) and/or Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jostoco”). • Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”). • Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) and/or Minh Hai Joint-Stock Seafoods Processing Company (“Sea Minh Hai”). • Minh Hai Sea Products Import Export Company (Seaprimex Co). • Minh Phat Seafood and/or Minh Phat Seafood Co., Ltd. • Minh Phu Seafood Corp. • Minh Phu Seafood Corporation. • Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively “Minh Phu Group”). • Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.). • Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) and/or Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively “Minh Phu Group”). • Minh Qui Seafood Co., Ltd. • Nam Hai. • Ngoc Sinh Private Enterprise. • Ngoc Sinh Seafoods. • Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”). • Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”) and/or Nha Trang Fisheries Joint Stock Company (“Nha Trang FISCO”). • Nha Trang Seaproduct Company (“Nha Trang Seafoods”). • Nha Trang Seaproduct Company (“Nha Trang Seafoods”) and/or Nha Trang Seaproduct Company “NHA TRANG SEAFOODS”). • Nhat Duc Co., Ltd. • Nhat Duc Co., Ltd. (“Nhat Duc”). • Nyd Co., Ltd. • Orange Fashion. • Pataya Food Industry (Vietnam) Ltd. • Phu Cuong Seafood Processing & Import-Export Co., Ltd. (aka Phu Cuong Jostoco Seafood Corporation, Phu Cuong Jostoco Corp. or Phu Cuong Seafood Processing Import-Export Company Limited). • Phu Cuong Seafood Processing and Import-Export Co., Ltd. • Phu Cuong Seafood Processing and Import-Export Co., Ltd. and/or Phu Cuong Seafood Processing & Import-Export Co., Ltd. • Phu Thuan Corporation. • Phuong Nam Co. Ltd. • Phuong Nam Company, Ltd. (“Phuong Nam”). • Phuong Nam Seafood Co., Ltd. • Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd. • S.R.V. Freight Services Co., Ltd. • Sao Ta Foods Joint Stock Company (“Fimex VN”). • Sao Ta Foods Joint Stock Company (“FIMEX VN”). • Sao Ta Foods Joint Stock Company (“Fimex VN”) and/or Sao Ta Foods Joint Stock Company (“FIMEX”). • Seafoods and Foodstuff Factory Vietnam. • Seaprimexco Vietnam. • Seaprodex Danang. • Seaprodex Minh Hai. • Sea Product. • Soc Trang Aquatic Products and General Import Export Company (“Stapimex”). • Soc Trang Aquatic Products and General Import Export Company (“Stapimex”) and/or Soc Trang Aquatic Products and General Import-Export Company (“STAPIMEX”). • Soc Trang Seafood Joint Stock Company (“STAPIMEX”). • Song Huong ASC Import-Export Company Ltd. • Song Huong ASC Joint Stock Company. • Sustainable Seafood. • Tan Thanh Loi Frozen Food Co., Ltd. • Tecapro Co. (Tacbest Factory). • Thanh Hung Co., Ltd. • Tho Quang Seafood Processing & Export Company. • Thuan Phuoc Seafoods and Trading Corporation. • Thuan Phuoc Seafoods and Trading Corporation and its separate factories Frozen Seafoods Factory No. 32, Seafoods and Foodstuff Factory, and My Son Seafoods Factory (collectively “Thuan Phuoc Corp.”). • Thuan Phuoc Seafoods and Trading Corporation and/or Thuan Phuoc Seafoods and Trading Corporation and/or Thuan Phuoc Seafoods and Trading Corporation (and its affiliates). • Tien Tien Garment Joint Stock Company. • Tithi Co., Ltd. • UTXI Aquatic Products Processing Company. • UTXI Aquatic Products Processing Corporation. • Vien Thang Pte Co., Ltd. • Viet Hai Seafood Co., Ltd. a/k/a Vietnam Fish One Co., Ltd. (“Fish One”). • Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”). • Viet Hai Seafoods Company Ltd. (Vietnam Fish One).	

	Period to be reviewed
• Viet Foods Co., Ltd.	
• Viet Foods Co., Ltd. (“Viet Foods”).	
• Viet Nhan Company.	
• Vietnam Fish One Co., Ltd.	
• Vietnam Northern Viking Technology Co., Ltd.	
• Vilfood Co.	
• Vina Atm Co., Ltd.	
• Vinatex Danang.	
• Vinh An Co., Ltd.	
• Vinh Hoan Co., Ltd.	
• Vinh Loi Import Export Company (“VIMEX”).	
• Vinh Loi Import Export Company (“Vimexco”).	
• Vinh Loi Import Export Company (“Vimexco”) and/or Vinh Loi Import Export Company (“VIMEX”).	
People’s Republic of China:[5 6 7] Frozen Warmwater Shrimp A–570–893	02/01/2009—01/31/2010
• Allied Pacific Aquatic Products Zhanjiang Co Ltd.	
• Allied Pacific Food (Dalian) Co., Ltd.	
• Asian Seafoods (Zhanjiang) Co., Ltd.	
• Beautiful Lighting Co., Ltd.	
• Beihai Qinguo Frozen Foods Co., Ltd.	
• Capital Prospect.	
• Century Distribution Systems (Shenz).	
• Dafu Foods Industry.	
• Daishan Baofa Aquatic Product Co.	
• Elaite Group Co., Ltd.	
• Everflow Ind. Supply.	
• Flags Wins Trading Co., Ltd.	
• Fuchang Aquatic Products.	
• Fujian Haiding Global Foods.	
• Fujian Provincial Meihua Aquat.	
• Fuqing Maowang Seafood Development.	
• Fuqing Minhua Trade Co., Ltd.	
• Fuqing Xuhu Aquatic Food Trdg.	
• Fuqing Yihua Aquatic Food Co., Ltd.	
• Fuqing Yihua Aquatic Food Co., Ltd. and/or Fuqing Yihua Aquatic Products Co., Ltd.	
• Gallant Ocean (Nanhai), Ltd.	
• Geelong Sales.	
• Guangdong Jiahuang Foods.	
• Guangdong Jinhang Foods Co., Ltd.	
• Guangdong Wanya Foods Fty. Co., Ltd.	
• Hai Li Aquatic Co., Ltd.	
• Hainan Hailisheng Food Co., Ltd.	
• Hainan Seaberry Seafoods.	
• Hainan Siyuan Foods Co., Ltd.	
• Hainan Zhongyu Seafood Co., Ltd.	
• Hilltop International.	
• Huasheng Aquatic Pro. Factory.	
• Huian County Import & Export and Trading Co.	
• Innovative Aluminum.	
• Intecs Service.	
• Jet Power International Ltd.	
• JetStar Co.	
• Leizhou Yunyuan Aquatic Products Co., Ltd.	
• Liang Hsin Lighting Shenzhen.	
• Maoming Changxing Foods.	
• Maoming Jiahui Foods Co., Ltd.	
• New Peak Service.	
• North Seafood Group Co.	
• Panasonic Mfg. Xiamen Co.	
• Phoenix Intl.	
• Regal Marine Resources Co., Ltd.	
• Rizhao Smart Foods.	
• Ruian Huasheng Aquatic Products Fac.	
• Savvy Seafood Inc.	
• Sea Trade International Inc.	
• Second Aquatic Food.	
• Shandong Huashijia Foods.	
• Shanghai Apa International Trading.	
• Shanghai Smiling Food Co., Ltd.	
• Shantou Jin Cheng Food Co.	
• Shantou Longfen Foodstuff Co.	
• Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.	
• Shantou Longsheng Aquatic Product.	
• Shantou Red Garden Foodstuff Co., Ltd. and/or Shantou Red Garden Food Processing Co., Ltd.	
• Shantou Wanya Foods Fty. Co., Ltd. (Branch Factory).	

	Period to be reviewed
• Shantou Xinwanya Aquatic Product Ltd. • Shantou Yelin Frozen Seafood Co., Ltd. • Shantou Yue Xiang Commercial Trading Co., Ltd. • Shenzhen Pingyue Trading Co., Ltd. • SLK Hardware. • Thai Royal Frozen Food Zhanjiang Co., Ltd. • Sysgration. • Tianjin Dongjiang Food Co., Ltd. • Tongwei Hainan Aquatic Products Co., Ltd. • Top One Intl. • Wenling Xingdi Aquatic Product. • Yangcheng Seahorse Foods. • Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd. • Yangjiang Wanshida Seafood Co., Ltd. • Zhangjiang Bo Bo Go Ocean. • Zhanjiang Evergreen Aquatic Products. • Zhanjiang Fuchang Aquatic Product Freezing Plant. • Zhanjiang Go-harvest Aquatic Products Co., Ltd. • Zhanjiang Haizhou Aquatic Product. • Zhanjiang Huibaoye Trading Co., Ltd. • Zhanjiang Jebshin Seafood. • Zhanjiang Jinguo Marine Foods Company Limited. • Zhanjiang Longwei Aquatic Product. • Zhanjiang Regal Integrated Marine Resources Co., Ltd. • Zhanjiang Regal Integrated Marine Resources. • Zhejiang Daishan Baofa Aquatic Products Co., Ltd. • Zhejiang Industrial Group Co., Ltd. • Zhj Jinguo Marine Foods. • Zhoushan Corp. for Intl. Economic and Technical Cooperation. • Zhoushan Haohai Aquatic Products. • Zhoushan Putuo Huafa Sea Products Co., Ltd. • Zhoushan Qiangren Imp. & Exp.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published in the **Federal Register** the following document: *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to the antidumping duty administrative reviews of frozen warmwater shrimp from Vietnam and the PRC being initiated through this notice. Parties who wish to participate in the antidumping duty administrative reviews of frozen warmwater shrimp from Vietnam and the PRC should ensure that they meet the requirements in these procedures (e.g., the filing of separate letters of appearance as discussed in 19 CFR 351.103(d)).

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i). Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of administrative reviews no later than the last day of the month following the anniversary month of the order.

Dated: April 5, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–8155 Filed 4–8–10; 8:45 am]

BILLING CODE 3510–DS–P

[4] If one of the below named companies does not qualify for a separate rate, all other exporters of shrimp from Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam-wide entity of which the named exporters are a part.

[5] If one of the below named companies does not qualify for a separate rate, all other exporters of shrimp from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC-wide entity of which the named exporters are a part.

[6] Some companies appear to be listed twice, but, because there were multiple addresses provided in the administrative review requests for similarly named companies, we are listing them separately.

[7] Domestic producers requested a review of Zhanjiang Goulian Aquatic Products Co., Ltd. The Department confirmed with Domestic Producers that this name was misspelled in their administrative review request. *See* ''Memorandum to the File, from Irene Gorelik, Senior Analyst, dated March 24, 2010.'' We note that Zhanjiang Guolian Aquatic Products Co., Ltd. was excluded from the antidumping duty order. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China,* 70 FR 5149 (February 1, 2005). Therefore, since this company was excluded from the order, we are not initiating an administrative review for Zhanjiang Guolian Aquatic Products Co., Ltd.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV65

Marine Mammals; File No. 1100–1849

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Shane Moore, Moore & Moore Films, Box 2980, 1203 Melody Creek Lane, Jackson, WY 83001 has been issued an amendment to Permit No. 1100–1849.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 29, 2009, notice was published in the **Federal Register** (74 FR 49858) that an amendment to Permit No. 1100–1849 had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 1100–1849, issued March 22, 2007 (72 FR 14525), authorizes the permit holder to take 10 killer whales (*Orcinus orca*) of the Eastern North Pacific Transient Stock, 10 gray whales (*Eschrichtius robustus*), and 10 minke whales (*Balaenoptera acutorostrata*) by close approach for filming in the Gulf of Alaska and Bering Sea between April 1 and August 31 of each year. The original permit was valid through March 31, 2010. The amendment extends the permit for two years until March 31, 2012.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: April 5, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–8137 Filed 4–8–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS24

Small Takes of Marine Mammals Incidental to Specified Activities; Antioch Bridge Seismic Retrofit Project, California

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the California Department of Transportation (Caltrans) allowing the take of small numbers of marine mammals, by Level B harassment only, incidental to pile driving associated with the Antioch Bridge Seismic Retrofit Project.

DATES: Effective August 15, 2010, through August 14, 2011.

ADDRESSES: A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On May 4, 2009, NMFS received a request from Caltrans to harass marine mammals incidental to the Antioch Bridge Seismic Retrofit Project. In accordance with the MMPA, NMFS

issued a notice in the **Federal Register** on December 21, 2009 (74 FR 67856), requesting comments from the public on the proposed IHA.

The Antioch Bridge was designed in the late 1970s based on the design standards that Caltrans established in 1971. Since that time, upgraded standards have been issued, particularly Caltrans' Seismic Design Criteria of 1999, of which the bridge does not meet. The retrofit project will provide a seismic upgrade of the Antioch Bridge to meet these current requirements. Pile driving during the project may result in harassment of harbor seals (Phoca vitulina richardii) and California sea lions (*Zalophus californianus*) within the action area.

Description of the Specified Activity

The Antioch Bridge is located 5.4 miles east of the confluence of the Sacramento and San Joaquin Rivers, is 9,437–ft long, accommodates one lane of traffic in either direction, and includes narrow accommodation for bicyclists and pedestrians. Proposed retrofit elements to the bridge include installation of steel bracings; replacement of the existing elastometric bearings with isolation bearings; and removal of the existing curtain walls and retrofit of all the columns within the slab span structure. To accomplish this, a temporary trestle will be built to allow access to the piers in shallow water (out to Pier 11). The temporary marine trestle will be constructed from the south shore of the San Joaquin River, out approximately 910–ft into the river along the west side of the existing bridge structure. This is where water depths are less than 10–ft below mean lower-low water (MLLW) and are too shallow to be accessed by barge. The trestle will be 25 ft wide with piles spaced 25–ft apart. It will be constructed using approximately 160 24–in steel hollow shell piles, which will be installed with a vibratory hammer. Vibrating a single 24–in pile into place requires, at the most, ten minutes of noise generating vibration. In addition, Caltrans will "proof" or test one pile per day using an impact hammer to ensure the pile can sustain the required load. Proofing the piles will require approximately 20–40 blows per day, generating elevated sound pressure for about one minute per day. The entire project is expected to take 2.5 years to complete; installation of the temporary piles is expected to take approximately 4 months and is planned for August 1-November 1, 2010, although this may be delayed due to construction scheduling. At the completion of the project, the trestle and all associated piles will be removed. All pile driving will be conducted during daylight hours only.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on December 21, 2009 (74 FR 67856). During the 30 day public comment period, the Marine Mammal Commission (Commission) provided the only comment.

Comment: The Commission states that it recommends that NMFS issue the requested authorization, provided that the monitoring and mitigation activities described in NMFS' **Federal Register** notice are carried out as described.

Response: NMFS agrees with the Commission's recommendation, and all monitoring and mitigation measured described in the previous **Federal Register** notice (74 FR 67856) are required in the current IHA.

Description of Marine Mammals in the Area of the Specified Activity

At least 35 marine mammal species can be found off the coast of California; however, few venture into the Bay and only Pacific harbor seals and California sea lions inhabit the eastern arm of the Bay over which the Antioch Bridge stretches. Both species have been known to sporadically venture into estuaries and rivers in search of food, and the California Department of Fish and Game (CDFG) indicates that the ranges of these two species encompass the region of the Delta in which the project occurs. Detailed information on California sea lions and harbor seals was provided in the December 21, 2009 (74 FR 67856), **Federal Register** notice.

Potential Effects on Marine Mammals

NMFS and Caltrans have determined that pile driving has the potential to result in behavioral harassment of harbor seals and California sea lions that may be swimming or foraging in the project vicinity while pile driving is being conducted. A detailed description of potential impacts to marine mammals can be found in NMFS' proposed IHA **Federal Register** notice (December 21, 2009, 74 FR 67856) and are summarized here.

Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels (RLs) will depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.*, 1995). Type and significance of marine mammal reactions to noise are likely to be dependent on a variety of factors including, but not limited to, the behavioral state (e.g., feeding, traveling, etc.) of the animal at the time it receives the stimulus, frequency of the sound, distance from the source, and the level of the sound relative to ambient conditions (Southall *et al.*, 2007).

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid injury of marine mammals (e.g., PTS), pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB rms or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.*, 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (e.g., impact pile driving) and 120 dB rms for non-pulse noise (e.g., vibratory pile driving), but below the aforementioned injury thresholds. Harbor seals and California sea lions are not known to haul-out close to the bridge; therefore, impacts from in-air pile driving noise are not applicable here.

Estimated distances to NMFS current threshold sound levels from pile driving during the proposed action were derived using a practical spreading model (15 log R) and are outlined in Table 1 below. Distances to these thresholds will undergo acoustic sound source verification tests upon commencement of pile driving and may be adjusted accordingly.

TABLE 1: UNDERWATER DISTANCES TO NMFS HARASSMENT THRESHOLD LEVELS DURING PILE DRIVING.

Pile Type	Hammer Type	Sound Levels (rms)		
		190 dB	160 dB	120 dB
24“ steel	Impact	16.8 m (55 ft)	1,000 m (3,280 ft)	n/a
24“ steel	Vibratory	n/a	n/a	16.4 km (10.2 miles)

NMFS anticipates reactions of marine mammals to noise will be similar to those documented during previous Caltrans' pile driving projects and those presented in scientific literature. These include short-term behavioral disturbances such as temporary avoidance behavior around the bridge which may affect the routes of seals and sea lions or temporary cessation of foraging. Pinnipeds are not known to pup within the action area; therefore, this behavior will not be affected. Gray whales are not known to socialize, calve, or forage within the action area; therefore, these behaviors would not be interrupted. However, some avoidance by gray whales may occur. Because pile driving would not occur continuously throughout the day, any effects from pile driving will be limited. The location of piles would be limited to shallow water (< 10 ft); no piles would be placed in the river's channel. Therefore, adequate passage space under the bridge will be available to marine mammals. No long term impacts are expected to occur.

Anticipated Effects on Marine Mammal Habitat

Marine mammal habitat will be temporarily disturbed due to pile driving activities. All steel and sheet piles would be removed once the project is complete; therefore, no additional obstacles (e.g., more piles than currently present) would be permanent. Noise from pile driving may adversely impact individual fish species which serve as marine mammal prey; however, this would be limited to fish immediately within the vicinity of the pile and is not expected to substantially reduce prey availability.

Monitoring and Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. The latter does not apply here as no subsistence hunting takes place in California. The following summarizes mitigation and monitoring measures set forth in the IHA.

Establishment of Safety Zone and Shut Down Requirements

The isopleth for the Level A harassment (injury) threshold (190 dB re: 1 microPa) is modeled to be within 55 ft (16.8 m) of the impact pile hammer; however, Caltrans has proposed to delay impact pile driving should a marine mammal come within or approach 100 ft (30 m) of the pile being driven. Vibratory pile driving does not present source levels at or above NMFS' harassment threshold for Level A harassment (190 dB re 1 microPa); however, Caltrans will also employ a 30 m (100 ft) safety zone to protect animals against physical harm from the equipment. Sound source verification tests will be conducted upon commencement of pile driving to verify acoustic models (see Acoustic Monitoring below).

Limited Use of Impact Hammer

As a result of Endangered Species Act (ESA) section 7 consultation discussions with NMFS, Caltrans has agreed to drive all temporary piles with a vibratory hammer, to reduce impacts to listed fish, with the exception of one pile per day being “proofed” with an impact hammer. Proofing requires approximately 20–40 blows per pile, which equates to approximately one minute of impact hammering per day. This action would also serve to reduce impacts to marine mammals.

Soft Start to Pile Driving Activities

A “soft start” technique will be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before vibratory piling reaches full energy. The soft start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by 1–minute waiting period. The procedure would be repeated two additional times. Due to the short duration of impact pile driving (20 seconds), the general ramp-up requirement for impact pile driving does not apply as it would actually increase the duration of noise emitted into the environment, and monitoring should effectively detect marine mammals within or near the designated safety zone of 100 ft (30 m). If any marine mammal is sighted within or approaching this shut down zone prior to pile-driving, Caltrans will delay pile-driving until the animal has moved outside and on a path away from such zone or after 15 minutes have elapsed since the last sighting of the marine mammal.

Visual Monitoring

Safety zone monitoring will be conducted during all active pile driving. Monitoring of the 100 ft (30 m) safety zone will be conducted by qualified, NMFS-approved, protected species observers (PSOs). Impact pile driving will not begin until the 100 ft safety zone is clear of marine mammals and will be stopped in the event that marine mammals enter the safety zone. For all pile driving, PSOs will monitor for marine mammals at least 30 minutes prior to, during, and 30 minutes post in-water pile driving. Monitoring could be conducted from small boats, as observation from a higher vantage point may not be practical. PSOs will remain 50 yards from swimming pinnipeds in accordance with NMFS marine mammal viewing guidelines (*http://swr.nmfs.noaa.gov/psd/rookeryhaulouts/CASEALVIEWBROCHURE.pdf*). This will prevent additional harassment to pinnipeds from the vessel. If a land based monitoring point can be found, PSOs would be stationed here. Observations will be made with binoculars during daylight hours. Data collection will consist of: (1) a count of all pinnipeds and cetaceans sighted by species, age and sex class, where able to be determined; (2) a description of behavior (based on the Richmond Bridge Harbor Seal Survey classification system); (3) location; (4) direction of movement; (5) type of construction that is occurring; (6) any acoustic or visual reactions to specified activities; and (7) time of the observation; (8) time that pile driving begins and ends; and (9)

environmental conditions such as wind speed, wind direction, visibility, temperature, tide level, current, and sea state (described using the standard Beaufort sea scale).

Acoustic Monitoring

Monitors will be present to conduct hydro-acoustic monitoring to empirically establish the 190 dB RMS (impulse) safety zone and behavioral harassment zones. Field measurements of sound pressure levels will be recorded and analyzed. A more detailed marine mammal monitoring plan and hydro-acoustic monitoring plan will be made by the monitoring contractor prior to the start of the Antioch Bridge seismic retrofit.

Reporting

A final report summarizing all marine mammal monitoring data, including those parameters listed above, and construction activities will be submitted to NMFS 90 days after the IHA expires. An acoustic report analyzing underwater sound characteristics during pile driving shall also be submitted within 90 days of expiration of the IHA.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

For reasons provided in detail in NMFS' December 4, 2009 (74 FR 67856), **Federal Register** notice, pile driving could result in harassment of 10 harbor seals and 10 California sea lions or approximately zero percent of each population. The number of marine mammals authorized to be taken incidental to pile driving activities is considered small when compared to the population sizes of the affected stocks (34,233 and 238,000, respectively).

Based on the analysis contained herein on the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that pile driving associated with the Antioch Bridge Seismic Retrofit Project will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks. There are no relevant subsistence uses of marine mammals implicated by this action; therefore, no impacts to subsistence use will occur.

Endangered Species Act (ESA)

No ESA-listed marine mammals are known to occur within the action area; therefore, therefore, ESA consultation on issuance of the proposed IHA was not required. However, other ESA-listed species under NMFS' jurisdiction do occur within the action area.

On January 26, 2009, NMFS received a request from the Federal Highway Administration (FHWA) to initiate consultation under section 7 of the ESA on Caltrans' proposed Antioch Bridge Seismic Retrofit Project as ESA-listed fish are present within the action area. NMFS issued a Biological Opinion (BiOp) on Caltran's Antioch Bridge Seismic Retrofit Project on August 13, 2009. The BiOp concluded that the proposed activities are not likely to jeopardize the continued existence of endangered Sacramento River Winter-run Chinook salmon, threatened CV Spring-run Chinook salmon, threatened CV steelhead, or threatened Southern DPS of North American green sturgeon, and is not likely to destroy or adversely modify designated or proposed critical habitat for these species.

National Environmental Policy Act (NEPA)

On September 2, 2009, Caltrans released an Environmental Assessment (EA) and Finding of No Significant Impact for the Dumbarton Bridge project. For purposes of issuing an IHA, NMFS found the environmental analysis on marine mammal impacts lacking and determined further NEPA analysis was necessary. In the proposed IHA **Federal Register** notice for this action, NMFS preliminary determined a Categorical Exclusion memo was appropriate for issuing an IHA for the specified activities. However, after further consideration, NMFS prepared an EA analyzing the effects of the permitted activities on the human environment. Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required.

Dated: April 1, 2010.

James H. Lecky,

Director,Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–8167 Filed 4–8–10; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 5/10/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 2/12/2010 (75 FR 6869–6870), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN: 7045–01–482–7540—CD–R Silver w/ Jewel Case.
NSN: 7045–01–503–2033—CD/DVD Sleeves, Clear.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA.
Coverage: C–List for the requirements of Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2010–8094 Filed 4–8–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions To and Deletions From the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On or Before: 5/10/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or To Submit Comments Contact: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Gloves, Impact

NSN: 8415–01–498–4968—Extra-Extra-Large, Black
NSN: 8415–01–498–4966—Extra-Large, Black
NSN: 8415–01–498–8180—Large, Black
NSN: 8415–01–498–4964—Medium, Black
NSN: 8415–01–497–7265—Small, Black
NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL
Coverage: C–List for the government requirements for the Department of Veterans Affairs, NAC, Hines, IL.
NSN: 7520–00–NIB–2101—Pen Set, Rosewood (Army Strong)
NSN: 7520–00–NIB–2102—Pen Set, Rosewood (Reserve)
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Dept of the Army, XR W6BB ACA Knox, Fort Knox, KY
Coverage: C–List for the government requirements for the Department of the Army, Fort Knox, KY.

Wooden Trunk Locker

NSN: 8460–00–243–3234
NPA: Employment Source, Inc., Fayetteville, NC
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA
Coverage: C–List for 50% of the government requirements for the Defense Supply Center Philadelphia, Philadelphia, PA.

Label, Pressure Sensitive Recycled Copier

NSN: 7530–00–NIB–0902
NSN: 7530–01–207–4363
NSN: 7530–01–086–4518
NPA: North Central Sight Services, Inc., Williamsport, PA

Portfolio, Double Pocket

NSN: 7510–01–411–7000
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, PA.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP Ctr—Paper Products, New York, NY.
Coverage: A–List for the total government requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Basewide Custodial Services Camp Bullis, TX.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Dept of the Army, XR W6BB ACA Sam Houston, Fort Sam Houston, TX.
Service Type/Location: Administrative Services, 426 5th Avenue, Sheppard AFB, TX.
NPA: Work Services Corporation, Wichita Falls, TX.
Contracting Activity: Dept of the Air Force, FA3020 82 CONS LGC, Sheppard AFB, TX.
Service Type/Location: Custodial Services, Boise Air Traffic Control Tower, Boise, ID.
NPA: Western Idaho Training Company, Caldwell, ID.
Contracting Activity: Department of Transportation/Federal Aviation Admin, Northwest/Mountain REG, LOG. DIV (ANM–55), Renton, WA.
Service Type/Location: Janitorial Services, Corp of Engineers Buildings, Elmendorf AFB, AK, Corp of Engineers Buildings, Fort Richardson, AK.
NPA: MQC Enterprises, Inc., Anchorage, AK.
Contracting Activity: XR W2SN ENDIST Alaska, Dept of Defense, Dept of the Army, Anchorage, AK.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Scarf, Branch of Service

NSN: 8455–00–916–8398
NPA: UNKNOWN
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Solvent, Correction Fluid

NSN: 7510–01–333–6241
NPA: Lighthouse for the Blind, St. Louis, MO
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP Ctr—Paper Products, New York, NY.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2010–8095 Filed 4–8–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Meeting of Chronic Hazard Advisory Panel on Phthalates

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Consumer Product Safety Commission (Commission) announces the first meeting of the Chronic Hazard Advisory Panel (CHAP) on Phthalates. The Commission appointed this CHAP to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles, pursuant to section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314).

DATES: The meeting will be held from 9 a.m. to 5 p.m. on Wednesday, April 14 and from 9 a.m. to 4 p.m. on Thursday, April 15, 2010.

ADDRESSES: The meeting will be held in the fourth floor hearing room in the Commission's offices at 4330 East West Highway, Bethesda, Maryland.

Online Registration: Members of the public who wish to attend the meeting are requested to preregister online at *http://www.cpsc.gov/cgibin/chap.aspx.* This meeting will also be available live via Web cast at *http://www.cpsc.gov/webcast.* Registration is not necessary to view the Web cast.

FOR FURTHER INFORMATION CONTACT: Michael Babich, Directorate for Health Sciences, Consumer Product Safety Commission, Bethesda, MD 20814; telephone (301) 504–7253; e-mail *mbabich@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has previously investigated potential risks posed to children from phthalate plasticizers, especially di(2-ethylhexyl) phthalate (DEHP) and diisononyl phthalate (DINP), which were used to soften some children's teethers, rattles, and toys made from polyvinyl chloride (PVC). Phthalates can leach from such products when they are mouthed by children, causing some phthalates to be ingested. In addition, children and adults can be exposed to phthalates from many sources, including consumer products, food, cosmetics, medical devices, and the environment. Certain phthalates have been shown to cause adverse health effects, including birth defects, in laboratory animals.

Section 108 of the CPSIA permanently prohibits the sale of any "children's toy or child care article" containing more than 0.1 percent of three specified phthalates—DEHP, dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP). Section 108 of the CPSIA also prohibits, on an interim basis, the sale of "toys that can be placed in a child's mouth" or "child care articles" containing more than 0.1 percent of three additional phthalates—DINP, diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DNOP).

Moreover, section 108 of the CPSIA requires the Commission to convene a CHAP "to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles." The CPSIA requires the CHAP to complete an examination of the full range of phthalates that are used in products for children and to: (i) Examine all of the potential health effects (including endocrine disrupting effects) of the full range of phthalates; (ii) consider the potential health effects of each of these phthalates both in isolation and in combination with other phthalates; (iii) examine the likely levels of children's, pregnant women's, and others' exposure to phthalates, based on a reasonable estimation of normal and foreseeable use and abuse of such products; (iv) consider the cumulative effect of total exposure to phthalates, both from children's products and from other sources, such as personal care products; (v) review all relevant data, including the most recent, best-available, peer-reviewed, scientific studies of these phthalates and phthalate alternatives that employ objective data collection practices or employ other objective methods; (vi) consider the health effects of phthalates not only from ingestion but also as a result of dermal, hand-to-mouth, or other exposure; (vii) consider the level at which there is a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals and their offspring, considering the best available science, and using sufficient safety factors to account for uncertainties regarding exposure and susceptibility of children, pregnant women, and other potentially susceptible individuals; and (viii) consider possible similar health effects of phthalate alternatives used in children's toys and child care articles.

The CHAP's examination must be conducted *de novo*, and the statute contemplates completion of its examination within 18 months of appointment of the CHAP. The CHAP must review prior work on phthalates by the Commission, but the Commission's prior work is not to be considered determinative.

The CHAP must make recommendations to the Commission regarding any phthalates (or combinations of phthalates) in addition to those identified in section 108 of the CPSIA or phthalate alternatives that the panel determines should be declared banned hazardous substances. The Commission selected the CHAP members from scientists nominated by the National Academy of Sciences. See 15 U.S.C. 2077, 2030(b).

The first meeting of the CHAP on Phthalates will be held on April 14 and 15, 2010, in the fourth floor hearing room at the Commission's offices at 4330 East West Highway, Bethesda, Maryland. The meeting will begin at 9 a.m. both days and is scheduled to end at 5 p.m. on April 14 and 4 p.m. on April 15. The meeting is open to the public, space permitting, but no opportunity for public participation in the first meeting is scheduled. There will be an opportunity in connection with the second meeting of the CHAP for presentation of oral and written data and views (date to be announced).

At the first CHAP meeting, the CHAP will choose its Chair and Vice Chair and the CPSC staff will present information on the history of the phthalates project, the scope of the CHAP on phthalates, including a review of the *de novo* examination called for in section 108 (b)(2)(B)(i) through (vii) of the CPSIA, and the CPSC staff's toxicity reviews and other work on phthalates. During the remainder of the meeting, the CHAP will consider how it will proceed and begin its deliberations.

Dated: April 6, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–8144 Filed 4–8–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences (USU), DoD.

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces a meeting of the Board of Regents of the Uniformed Services University of the Health Sciences (USU) on May 14, 2010.

DATES: The meeting will be held on Friday, May 14, 2010, from:

9 a.m. to 11:30 a.m. (Open Session).

11:30 a.m. to 12:30 p.m. (Closed Session).

12:30 p.m. to 3:30 p.m. (Open Session).

ADDRESSES: The meeting will be held at the Everett Alvarez Jr. Board of Regents Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Official, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066.

Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda

The actions that will take place include the approval of minutes from the Board of Regents Meeting held February 2, 2010; acceptance of reports from working committees; approval of faculty appointments and promotions; and the awarding of post-baccalaureate degrees as follows: Doctor of Medicine, Ph.D. in Nursing Science, Master of Science in Nursing, and master's and doctoral degrees in the biomedical sciences and public health. The Acting President, USU; the Vice President, USU Office of Research; and the President, Henry M. Jackson Foundation for the Advancement of Military Medicine, will also present reports. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility

Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of the meeting is open to the public. Seating is on a first-come basis. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements

Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**). If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Official will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the May 2010 meeting or at a future meeting.

Dated: April 5, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–8052 Filed 4–8–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Proposed Baseload Power Plant, East Kentucky Power Cooperative, Inc., Clark County, KY

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE), in accordance with 42 U.S.C. 4321 to 4370(f), is issuing this notice to advise the public that a Draft Supplemental Environmental Impact Statement (SEIS) has been prepared and is available for review and comment.

DATES: Written comments on the Draft SEIS will be accepted for 45 days following publication of the Environmental Protection Agency's notice of availability for the Draft SEIS in the **Federal Register**. The USACE will hold a public hearing at 7 p.m. (EDT) on June 8, 2010.

ADDRESSES: The Draft SEIS can be viewed online at: *http://www.ekpc.coop/smith-unit1.html.* The Draft SEIS will also be available for viewing at the locations listed in the **SUPPLEMENTARY INFORMATION** section. Comments should be submitted to Mr. Michael Hasty, Acting Chief, South Section, Regulatory Branch, Louisville District, P.O. Box 59, Louisville, KY 40201–0059. The Public Hearing will be held at the Clark County Extension Service office located at 1400 Fortune Drive in Winchester KY 40391.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hasty, Acting Chief, South Section, Regulatory Branch, Louisville District, P.O. Box 59, Louisville, KY 40201–0059. Phone (502) 315–6676, e-mail: *michael.d.hasty@usace.army.mil.*

SUPPLEMENTARY INFORMATION: A final EIS and Record of Decision was prepared by the U.S. Department of Energy in 2002/2003 for a proposed 540 megawatt coal-fired integrated gasification combined cycle (IGCC) electric generating plant at the same location, the Smith Site. That project, known as the Kentucky Pioneer IGCC Demonstration Project, was never built. The Corps has reviewed the EIS prepared by DOE and, based on similarities between the two projects, has determined to adopt that EIS as the basis for review of the current proposal. The Corps is preparing this Supplemental EIS (SEIS) to evaluate those aspects of the current proposal that are not substantially similar to the DOE project, as a result of changes in project parameters, existing environmental conditions, and relevant laws and regulations.

East Kentucky Power Cooperative, Inc. (EKPC) has applied for a Department of the Army (DA) permit from the U.S. Army Corps of Engineers (Corps) to authorize unavoidable impacts to jurisdictional waters of the U.S. pursuant to Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act (Section 10).

EKPC's Proposed Action, and the subject of the Draft SEIS, is to construct and operate a 278 megawatt circulating fluidized bed electric generating unit (CFB) and associated infrastructure at the existing J.K. Smith Power Station (the Smith Site) in southern Clark County, Kentucky. In addition to the CFB unit, other components of the Proposed Action on the Smith Site include: An approximately one-mile, 345 kV electric transmission line; two (2) beneficial reuse structural fills using coal combustion by-products (CCB); two (2) landfills for the on-site disposal of CCB; an emergency drought water storage reservoir; several soil borrow areas for landfill cover and other site development uses; and a new water intake/outfall structure in the Kentucky River.

The Proposed Action is needed to provide sufficient electric generating capacity to meet the projected baseload electric power needs of EKPC's rural member distribution cooperatives in the year 2013.

As proposed, the project would impact approximately 4.8 acres of jurisdictional wetlands and 75,495 linear feet of jurisdictional streams, including 17,811 linear feet of perennial stream. The construction of the intake/outfall structure would impact the Kentucky River, a navigable waterway. A separate Public Notice has been prepared announcing these proposed "waters of the United States" impacts and the requested DA permit. Construction of the Kentucky River intake structure and the dam and reservoir would result in floodplain impacts. Measures to minimize and mitigate the proposed impacts are included in the Draft SEIS.

The USACE has determined that the construction of this undertaking (Proposed Action) would have an adverse effect on two archaeological properties determined eligible for listing in the National Register of Historic Places. The USACE has consulted with the Kentucky State Historic Preservation Officer (SHPO) in accordance with 36 CFR part 800, has invited tribes with an interest in the area to participate in government-to-government consultation, and is working with the Kentucky SHPO and other interested parties to enter into a memorandum of agreement to address mitigation of the properties that would be affected if the Proposal is implemented.

The Draft SEIS considered 17 technology alternatives; several alternatives that did not include EKPC's construction of a new baseload plant; adding capacity at an existing EKPC facility; and a number of siting alternatives as means of responding to the identified purpose and need for the project. These alternatives were evaluated in terms of cost-effectiveness, technical feasibility, and environmental soundness. The Draft SEIS analyzes in detail the Proposal, two alternative technologies, IGCC and natural gas combined cycle, and the no action alternative.

Copies of the Draft SEIS are available for review at the following libraries (hours vary; contact individual repositories for available times):

1. Clark County Public Library, 370 South Burns Avenue, Winchester, KY 40391–1876, Phone (859) 744–5661.

2. Estill County Public Library, 246 Main Street, Irvine, KY 40336, Phone (606) 723–3030.

3. Lexington Public Library, 140 East Main Street, Lexington, KY 40507, Phone (859) 231–5520.

4. Madison County Public Library, 507 West Main Street, Richmond, KY 40475, Phone (859) 623–6704.

5. Mt. Sterling-Montgomery County Library, 241 West Locust Street, Mt. Sterling, KY 40353, Phone (859) 498–2404.

6. Paris-Bourbon County Public Library, 701 High Street, Paris, KY 40361, Phone (859) 987–4419.

7. Powell County Public Library, 725 Breckenridge Street, Stanton, KY 40380, Phone (606) 663–4511.

With this notice, the USACE invites any affected Federal, State, and local agencies and other interested persons to comment on the Draft SEIS. Written comments on the Draft SEIS will be accepted for 45 days following publication of the Environmental Protection Agency's notice of availability for the Draft SEIS in the **Federal Register**. The USACE will hold a public hearing at 7 p.m. on June 8, 2010 at the Clark County Extension Service, 1400 Fortune Drive, Winchester KY 40391. The hearing will include a presentation summarizing the proposed project and the findings of the Draft SEIS. The hearing will also provide attendees with an opportunity to submit both oral and written comments.

Dated: April 2, 2010.

Keith A. Landry,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 2010–8179 Filed 4–8–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11 a.m. to 12 p.m. on June 28, 2010, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel-related issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open sessions of the meeting will be held on Monday, June 28, 2010, from 8 a.m. to 11 a.m. The closed session of this meeting will be the executive session held from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the conference room of the Wesley Brown Field House, U.S. Naval Academy, Annapolis, MD. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander David S. Forman, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11 a.m. to 12 p.m. on June 28, 2010, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include, but not limited to, individual honor/conduct violations within the Brigade, and personnel-related issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to

the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to 12 p.m. will be concerned with matters coming under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Dated: April 2, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate Generals Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–8090 Filed 4–8–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, 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 May 10, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

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 Acting Director, Information Collection Clearance Division, 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: April 6, 2010.

Sheila Carey,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Gulf Coast Recovery Grant Application for Initial Funding.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 6,800.

Abstract: The Gulf Coast Recovery Grant (GCRG) is a new program authorized in Public Law 111–117—the Consolidated Appropriations Act, 2010. The Act reserves $12 million for competitive grants to provide funding to local educational agencies (LEA) in counties in Louisiana, Mississippi, and Texas that were designated by the Federal Emergency Management Agency as counties eligible for Individual Assistance due to damage caused by Hurricanes Katrina, Ike, or Gustav. Funds can be used to improve education through such activities as replacing instructional materials and equipment; paying teacher incentives; constructing, modernizing, or renovating school buildings; beginning or expanding Advanced Placement or other rigorous instructional curricula; starting or expanding charter schools, and supporting after-school or extended learning time activities.

The requirements under this grant include information collection activity covered under the Paperwork Reduction Act (PRA). The activity consists of the development of a new application for a LEA to submit to the Department to apply for FY 2010 funds.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 4268. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. 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. 2010–8169 Filed 4–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, 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 May 10, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

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 Acting Director, Information Collection Clearance Division, 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: April 6, 2010.

Sheila Carey,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Application for Grants under the Smaller Learning Communities Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 200.
Burden Hours: 11,600.

Abstract: The Smaller Learning Communities program awards grants to local educational agencies. This collection solicits applications for grant funding from eligible applicants. It describes the priorities, selection criteria, performance indicators, and other information that applicants must address in their applications. The information received from this collection will be used by the Department of Education to evaluate the eligibility of applicants and the quality of the applications they submit to determine the applications that merit grant funding. The Department of Education is proposing to establish two priorities and one new definition, eliminate several information collection requirements, and revise the selection criteria used to evaluate applications.

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 4272. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. 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. 2010–8170 Filed 4–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, 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 May 10, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

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 Acting Director, Information Collection Clearance Division, 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: April 6, 2010.

Sheila Carey,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Applications for New Grants under the Rehabilitation Services Administration.

Frequency: Annually.

Affected Public:

Businesses or other for-profit,
Not-for-profit institutions,
State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.
Burden Hours: 40,000.

Abstract: The Rehabilitation Services Administration (RSA) is seeking approval to extend the current Information Collection package, OMB #1820–0018 (streamlined discretionary grants 1894–0001) in order to solicit applications for RSA's Discretionary Grant Awards authorized by the Rehabilitation Act of 1973, as amended. The discretionary program areas include Rehabilitation Long Term and Short Term Training, Demonstrations, Capacity Building projects, Interpreter Training, In-Service Training, National Clearinghouse, National Leadership Institute, Technical Assistance and Continuing Education (TACE) Centers, Service Programs, Centers for Independent Living, the Helen Keller National Center and other discretionary grant programs approved by the Secretary. The current application package expires May 31, 2010 and in order to provide application packages to applicants, RSA is requesting an extension of the currently approved package for an additional three years.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 4245. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. 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. 2010–8173 Filed 4–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, 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 May 10, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

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 Acting Director, Information Collection Clearance Division, 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: April 5, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: NAEP 2011 Wave I (Reading, Math, Science, Economics).

Frequency: Once.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 976,165.

Burden Hours: 280,532.

Abstract: The National Assessment of Educational Progress (NAEP) is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, and the arts. In the current legislation that reauthorized NAEP (The No Child Left Behind Act of 2001 (Pub. L. 107–110)), Congress mandated again the collection of national education survey data through a national assessment program. The 2011 Wave 1 submittal contains the following 2011 assessments: the grades 4, 8, and 12 core (demographic) and subject-specific (reading (4, 8), mathematics (4, 8), science (8), and economics (12)) student background questionnaires; grades 4 and 8 teacher questionnaires (core, reading, mathematics, and science components); and grades 4 and 8 school questionnaires (core, reading, mathematics, science, and charter school components).

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 4273. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to MULLAN at 202–401–0563. 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. 2010–8108 Filed 4–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Number 84.295A]

Ready-to-Learn Television Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; correction.

SUMMARY: On March 22, 2010, we published in the **Federal Register** (75 FR 13515) a notice inviting applications for new awards for FY 2010 for the Ready-to-Learn Television Program. There is an error in one of the dates in that notice.

SUPPLEMENTARY INFORMATION: This notice corrects the meeting date for prospective applicants as follows:

Correction

On page 13518, in the first column, under *Notice of Intent to Apply,* second paragraph, line six, replace the date "April 8, 2010" with the date "April 15, 2010."

FOR FURTHER INFORMATION CONTACT: The Ready-to-Learn Television Program, U.S. Department of Education, 400

Maryland Avenue, SW., room 4W414, Washington, DC 20202 or by e-mail: *readytolearn@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 5, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–8168 Filed 4–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Overview Information; Race to the Top Fund Assessment Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.395B (Comprehensive Assessment Systems grants) and 84.395C (High School Course Assessment Programs grants).

Dates:

Applications Available: April 9, 2010.

Deadline for Notice of Intent To Apply: April 29, 2010.

Date of Technical Assistance Meeting for Prospective Applicants: April 22, 2010.

Deadline for Transmittal of Applications: June 23, 2010.

Deadline for Intergovernmental Review: August 23, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose and Overview of Program: Authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), the Race to the Top Fund Assessment Program provides funding to consortia of States to develop assessments that are valid, support and inform instruction, provide accurate information about what students know and can do, and measure student achievement against standards designed to ensure that all students gain the knowledge and skills needed to succeed in college and the workplace. These assessments are intended to play a critical role in educational systems; provide administrators, educators, parents, and students with the data and information needed to continuously improve teaching and learning; and help meet the President's goal of restoring, by 2020, the nation's position as the world leader in college graduates.

Through the Race to the Top Fund Assessment Program, the Department expects to award two categories of grants: (A) Comprehensive Assessment Systems grants, and (B) High School Course Assessment Programs grants. In this notice, we are establishing priorities, requirements, definitions, and selection criteria for each grant category. An eligible applicant (*i.e.,* a consortium of States) may apply for grants in both categories, provided it meets the eligibility requirements for each category. The Department will score and rank applications separately in each grant category. Following is an overview of the two grant categories:

(A) *Comprehensive Assessment Systems grants.* Over the past decade, State assessment results have brought much-needed visibility to disparities in achievement among different groups of students and helped meet increasing demands for data that can be used to improve teaching and learning. To fully meet the dual needs for accountability and instructional improvement, however, States need assessment systems that are based on standards designed to prepare students for college and the workplace, and that more validly measure student knowledge and skills against the full range of those standards and across the full performance continuum. Further, States need assessment systems that better reflect good instructional practices and support a culture of continuous improvement in education by providing information that can be used in a timely and meaningful manner to determine school and educator effectiveness, identify teacher and principal professional development and support needs, improve programs, and guide instruction.

This grant category supports the development of such assessment systems by consortia of States. Comprehensive Assessment Systems grants provide funding for the development of new assessment systems that measure student knowledge and skills against a common set of college- and career-ready standards (as defined in this notice) in mathematics and English language arts in a way that covers the full range of those standards, elicits complex student demonstrations or applications of knowledge and skills as appropriate, and provides an accurate measure of student achievement across the full performance continuum and an accurate measure of student growth over a full academic year or course. Assessment systems developed with Comprehensive Assessment Systems grants must include one or more summative assessment components in mathematics and in English language arts that are administered at least once during the academic year in grades 3 through 8 and at least once in high school and that produce student achievement data and student growth data (both as defined in this notice) that can be used to determine whether individual students are college- and career-ready (as defined in this notice) or on track to being college- and career-ready (as defined in this notice). In addition, assessment systems developed with Comprehensive Assessment Systems grants must assess all students, including English learners (as defined in this notice) and students with disabilities (as defined in this notice). Finally, assessment systems developed with Comprehensive Assessment Systems grants must produce data (including student achievement data and student growth data) that can be used to inform (a) determinations of school effectiveness; (b) determinations of individual principal and teacher effectiveness for purposes of evaluation; (c) determinations of principal and teacher professional development and support needs; and (d) teaching, learning, and program improvement.

To be eligible for a Comprehensive Assessment Systems grant, an eligible applicant must include at least 15 States, of which at least 5 States must be governing States (as defined in this notice). An eligible applicant receiving a Comprehensive Assessment Systems grant must ensure that the summative assessment components of the assessment system (in both mathematics and English language arts) will be fully implemented statewide in each State in the consortium no later than the 2014–2015 school year.[1] It is the expectation of the Department that States that adopt assessment systems developed with

[1] By requiring that member States fully implement the summative assessment components of the assessment system no later than the 2014–2015 school year, we believe that we are providing an eligible applicant receiving a Comprehensive Assessment Systems grant with an appropriate amount of time to design and develop summative assessments that meet the Absolute Priority and other requirements for this grant category.

Comprehensive Assessment Systems grants will use assessments in these systems to meet the assessment requirements in Title I of the ESEA.

In addition to meeting the need for assessment systems that can be used to determine whether students are college- and career-ready, this grant category seeks to ensure that the results from those systems will, in turn, be used meaningfully by institutions of higher education (IHEs). Under this grant category, we intend to promote collaboration and better alignment between public elementary, secondary, and postsecondary education systems by establishing a competitive preference priority for applications that include commitments from public IHEs or IHE systems to participate in the design and development of the consortium's final high school summative assessments and to implement policies that exempt from remedial courses and place into credit-bearing college courses students who meet the consortium-adopted achievement standard (as defined in this notice) for those assessments. An application that addresses this priority will receive competitive preference points based on the extent to which it demonstrates strong commitment from the public IHEs or IHE systems (as evidenced by letters of intent) and on the percentage of direct matriculation students (as defined in this notice) in public IHEs in the States in the consortium who are enrolled in those IHEs or IHE systems.

(B) *High School Course Assessment Programs grants.* In our nation's high schools, the rigor of courses offered varies and, in many cases, is not sufficient to prepare students for success in college and careers. To promote consistently high levels of rigor in high school courses across a well-rounded curriculum, this grant category supports the development of high school course assessment programs by consortia of States. High School Course Assessment Programs grants provide funding for the development of new assessment programs that cover multiple high school courses (which may include courses in core academic subjects and career and technical education courses) and that include a process for certifying the rigor of the assessments in the assessment program and for ensuring that assessments of courses covering similar content have common expectations of rigor. Each assessment in the assessment program must measure student knowledge and skills against standards from a common set of college- and career-ready standards in subjects for which such a set of standards exists, or otherwise against State or other rigorous standards; and must produce student achievement data and student growth data that can be used to inform (a) determinations of principal and teacher effectiveness and professional development and support needs, and (b) teaching, learning, and program improvement. In addition, assessments in the assessment program must be designed to assess the broadest possible range of students, including English learners and students with disabilities.

To be eligible for a High School Course Assessment Programs grant, an eligible applicant must include at least 5 governing States. An eligible applicant receiving a High School Course Assessment Programs grant must ensure that at least one course assessment developed under the assessment program will be implemented in each State in the consortium no later than the 2013–2014 school year and that all assessments in the assessment program will be operational no later than the 2014–2015 school year.[2] The Department will not require that assessments developed with High School Course Assessment Programs grants be used to meet the assessment requirements in Title I of the ESEA.

We believe that States and high schools will use the assessments in these assessment programs as part of coherent high school improvement efforts that include aligned curricula, instruction, and professional development. In that context, these assessments will play important roles in providing teachers, principals, students, and parents with the information they need to determine whether high school courses are sufficiently rigorous to prepare students for success in college and careers, as well as monitor student progress, adjust instruction, and ultimately improve student outcomes. To ensure that these assessment programs help students prepare for and transition to college successfully, we encourage eligible applicants to collaborate with IHEs in their design and development.

Within this grant category, the Department also seeks to promote the development of rigorous assessment programs for particular courses of high school study. To further the administration's goal of improving teaching and learning in the science, technology, engineering, and mathematics (STEM) subjects, we are establishing a competitive preference priority for applications that include a high-quality plan to develop, within the grant period and with input from one or more four-year degree-granting IHEs, assessments for high school courses that comprise a rigorous course of study designed to prepare high school students for postsecondary study and careers in the STEM fields. To help improve outcomes in career and technical education, we are also establishing a second competitive preference priority for applications that include a high-quality plan to develop, within the grant period and with relevant business community participation and support, assessments for high school courses that comprise a rigorous course of study in career and technical education that is designed to prepare high school students for success on technical certification examinations or for postsecondary education or employment.

As mentioned earlier, the Department supports the development, under both grant categories in this competition, of common assessments by consortia of States. We believe that States working together in consortia benefit from increased assessment resources and expertise and, thus, can develop assessments that are of higher quality than assessments developed by an individual State working on its own. In addition, bringing States together in consortia will improve the efficiency and cost-effectiveness of projects funded under this competition and ensure that the assessments that this competition supports are developed for as many States as possible as quickly as possible. Finally, the development of common assessments will enable the production of comparable data that can be used to identify and promote effective instructional strategies and practices more reliably across States.

In addition, we are requiring that eligible applicants receiving awards under either category in this competition develop assessment items and produce student data in a manner that is consistent with standards for interoperability, and that they make all assessment content (*i.e.,* assessments and assessment items) developed with funds from this competition freely available to States, technology platform providers, or others that request it for purposes of administering assessments, consistent with States' needs and with

[2] By requiring that at least one course assessment developed under the assessment program be implemented in each State in the consortium no later than the 2013–2014 school year and that all assessments in the assessment program be operational no later than the 2014–2015 school year, we believe that we are providing an eligible applicant receiving a High School Course Assessment Programs grant with an appropriate amount of time to design and develop course assessment programs that meet the Absolute Priority and other requirements for this grant category.

consortium or State requirements for test or item security. We believe that these requirements will ensure that assessment content developed with funds from this competition is widely available, including to States that are not part of consortia receiving funds under this competition as well as to commercial organizations wishing to further develop, extend, and incorporate the content into assessment products intended for State use. Moreover, we believe that making assessment content freely available will spur innovation in assessment technology and enable technology providers to compete for States' business on the basis of their developing efficient, effective, economical, and innovative assessment platforms.

The Department recognizes that there are assessment needs—particularly for alternate assessments based on alternate academic achievement standards and assessments of English language proficiency—that we do not attempt to address through this competition. We wish to note that we have plans to address these needs in other ways. For students with the most significant cognitive disabilities, alternate assessments based on alternate academic achievement standards are critical components of a complete assessment system. It is the Department's intent to support States in developing new alternate assessments based on alternate achievement standards, in coordination with this Race to the Top Assessment competition, through a separate competition that will be administered by the Department's Office of Special Education and Rehabilitative Services; we intend to issue a notice inviting applications for this program later this year. For English learners, new assessments of English language proficiency are also needed. The Department intends to set aside other funds in its FY 2011 budget to support State efforts to develop assessments of English language proficiency that are aligned with the college- and career-ready standards in English language arts currently being developed and adopted.

For additional information on the Race to the Top Fund Assessment Program, *see http://www2.ed.gov/programs/racetothetop-assessment/index.html.*

Note about Public and Expert Input Meetings: The design of this Race to the Top Fund Assessment Program competition has benefited significantly from a series of public and expert input meetings held by the Department. At these meetings, invited experts and members of the public provided input in response to questions, published in the **Federal Register** (*see* 74 FR 54795–54800 and 69081–69084), in the following programmatic areas: General and technical assessment issues, technology and innovation in assessment, high school assessments, assessing English learners, assessing students with disabilities, consortium and project management, and procurement. For information about these meetings, including transcripts and presentation materials, as well as other written input provided for this program, *see http://www2.ed.gov/programs/racetothetop-assessment/index.html.*

A. *Comprehensive Assessment Systems:*

Priorities: For the Comprehensive Assessment Systems grant category, we are establishing the following priorities for the FY 2010 grant competition only in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority. An eligible applicant should address this priority throughout the application narrative.

The priority is:

Comprehensive Assessment Systems Measuring Student Achievement Against Common College- and Career-Ready Standards. Under this priority, the Department supports the development of new assessment systems that will be used by multiple States; are valid, reliable, and fair for their intended purposes and for all student subgroups; and measure student knowledge and skills against a common set of college- and career-ready standards in mathematics and English language arts. To meet this absolute priority, an eligible applicant must demonstrate in its application that it will develop and implement an assessment system that—

(a) Measures student knowledge and skills against a common set of college- and career-ready standards (as defined in this notice) in mathematics and English language arts in a way that—

(i) Covers the full range of those standards, including standards against which student achievement has traditionally been difficult to measure;

(ii) As appropriate, elicits complex student demonstrations or applications of knowledge and skills;

(iii) Provides an accurate measure of student achievement across the full performance continuum, including for high- and low-achieving students; and

(iv) Provides an accurate measure of student growth over a full academic year or course;

(b) Consists of assessment components in mathematics and in English language arts that include, for each subject, one or more summative assessment components that—

(i) Are administered at least once during the academic year in grades 3 through 8 and at least once in high school; and

(ii) Produce student achievement data and student growth data (both as defined in this notice) that can be used to determine whether individual students are college- and career-ready (as defined in this notice) or on track to being college- and career-ready (as defined in this notice);

(c) Assesses all students, including English learners (as defined in this notice) and students with disabilities (as defined in this notice); and

(d) Produces data, including student achievement data and student growth data, that can be used to inform—

(i) Determinations of school effectiveness for purposes of accountability under Title I of the ESEA;

(ii) Determinations of individual principal and teacher effectiveness for purposes of evaluation;

(iii) Determinations of principal and teacher professional development and support needs; and

(iv) Teaching, learning, and program improvement.

Competitive Preference Priority: This priority is a competitive preference priority. Consistent with 34 CFR 75.105(c)(2)(i), we award additional points to an application as specified in the priority.

The priority is:

Collaboration and Alignment with Higher Education. The Department gives eligible applicants competitive preference points based on the extent to which they have promoted collaboration and alignment between member States' public elementary and secondary education systems and their public IHEs (as defined in section 101(a) of the Higher Education Act of 1965, as amended (HEA)) or systems of those IHEs. Eligible applicants addressing this priority must provide, for each IHE or IHE system, a letter of intent that—

(a) Commits the IHE or IHE system to participate with the consortium in the design and development of the consortium's final high school summative assessments in mathematics and English language arts in order to ensure that the assessments measure college readiness;

(b) Commits the IHE or IHE system to implement policies, once the final high school summative assessments are implemented, that exempt from remedial courses and place into credit-bearing college courses any student who meets the consortium-adopted

achievement standard (as defined in this notice) for each assessment and any other placement requirement established by the IHE or IHE system; and

(c) Is signed by the State's higher education executive officer (if the State has one) and the president or head of each participating IHE or IHE system.

All letters of intent must provide the total number of direct matriculation students (as defined in this notice) in the partner IHE or IHE system in the 2008–2009 school year. An eligible applicant must also provide the total number of direct matriculation students (as defined in this notice) in public IHEs in the consortium's member States.

The Department will award up to 20 competitive preference points based on the strength of commitment demonstrated in the letters of intent and on the percentage of direct matriculation students in public IHEs in the member States who are direct matriculation students in the partner IHEs or IHE systems. To receive full competitive preference points under this priority, eligible applicants must provide letters of intent that demonstrate strong commitment from each partner IHE or IHE system and that represent at least 30 percent of direct matriculation students in public IHEs in member States. No points will be awarded for letters of intent that represent fewer than 10 percent of direct matriculation students in public IHEs in member States.

Requirements: For the Comprehensive Assessment Systems grant category, we are establishing the following requirements for the FY 2010 grant competition only in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Eligible Applicants: Eligible applicants are consortia of States.[3]

Eligibility Requirements:

To be eligible to receive an award under this category, an eligible applicant must—

1. Include a minimum of 15 States, of which at least 5 States must be governing States (as defined in this notice);

2. Identify in its application a proposed project management partner and provide an assurance that the proposed project management partner is not partnered with any other eligible applicant applying for an award under this category;[4] and

3. Submit assurances from each State in the consortium that, to remain in the consortium, the State will adopt a common set of college- and career-ready standards (as defined in this notice) no later than December 31, 2011, and common achievement standards (as defined in this notice) no later than the 2014–2015 school year.

Application Requirements:

An eligible applicant's application must—

1. Indicate, consistent with 34 CFR 75.128, whether—

(a) One member of the consortium is applying for a grant on behalf of the consortium; or

(b) The consortium has established itself as a separate eligible legal entity and is applying for a grant on its own behalf;

2. Be signed by—

(a) If one member of the consortium is applying for a grant on behalf of the consortium, the Governor, the State's chief school officer, and, if applicable, the president of the State board of education from that State; or

(b) If the consortium has established itself as a separate eligible legal entity and is applying for a grant on its own behalf, a representative of the consortium;

3. Include an assurance that—

(a) A competitive procurement process based on a "best value" selection[5] will be used for tasks related to assessment design and development; and

(b) All applicable Federal procurement requirements, including the requirements of 34 CFR 80.36, will be met;

4. Include, consistent with 34 CFR 75.128, for each State in the consortium, copies of all Memoranda of Understanding or other binding agreements. These binding agreements must—

(a) Detail the activities that members of the consortium will perform;

(b) Bind each member of the consortium to every statement and assurance made in the application;

(c) Include an assurance, signed by the State's chief procurement official (or designee), that the State has reviewed its applicable procurement rules and determined that it may participate in and make procurements through the consortium; and

(d) Be signed by the Governor, the State's chief school officer, and, if applicable, the president of the State board of education;

5. Include—

(a) An executive summary of the eligible applicant's proposed project;

(b) A theory of action that describes in detail the causal relationships between specific actions or strategies in the eligible applicant's proposed project and its desired outcomes for the proposed project, including improvements in student achievement and college- and career-readiness;

(c) A plan for designing and developing the proposed assessment system;

(d) A plan for research and evaluation of the proposed assessment system;

(e) A plan for implementing the proposed assessment system; and

(f) A project management plan (including a workplan and timeline); and

6. Include a budget that—

(a) Describes in detail how funds from this grant category and other resources will be used to design, develop, implement, and evaluate the proposed assessment system;

(b) Identifies Level 1 budget modules (as defined in this notice) that do not exceed $150 million in total; and

(c) Identifies any Level 2 budget modules (as defined in this notice) that do not exceed $10 million each.

Program Requirements

An eligible applicant awarded a grant under this category must—

1. Evaluate the validity, reliability, and fairness of the summative assessment components of the assessment system, and make available through formal mechanisms (*e.g.,* peer-reviewed journals) and informal mechanisms (*e.g.,* newsletters), and in print and electronically, the results of any evaluations it conducts;

2. Actively participate in any applicable technical assistance activities

[3] Consistent with section 14013 of the ARRA, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[4] In selecting a proposed project management partner, an eligible applicant must comply with the requirements for procurement in 34 CFR 80.36. Due to the limited time period that eligible applicants have to select a proposed project management partner, we remind eligible applicants that they may, under 34 CFR 80.36, use informal procedures to select a proposed contractor for this purpose. For example, 34 CFR 80.36(d)(1) authorizes simple informal procedures to select contractors under the simplified acquisition threshold of $100,000; the regulations only require that the eligible applicant request offers from an adequate number of qualified sources. In addition, even if the eligible applicant expects that the proposed project management partner would cost more than $100,000, the regulations recognize special cases where a contractor must be selected within a very limited time period. Again, the eligible applicant must request proposals from an adequate number of qualified sources and select the contractor whose proposal is most advantageous to the program, considering price and other selection factors. In these situations, if informal solicitation does not result in an adequate number of proposals, the eligible applicant may select a single bidder so long as the eligible applicant documents the facts that formed the basis for its decision. 34 CFR 80.36(d)(1), (d)(3), and (d)(4).

[5] For example, section 2.101 of the Federal Acquisition Regulation (FAR) defines "best value" as the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

conducted or facilitated by the Department or its designees, including periodic expert reviews, collaboration with other consortia that receive funds under this program, and other activities as determined by the Department;

3. Work with the Department to develop a strategy to make student-level data that result from the assessment system available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies;[6]

4. Ensure that the summative assessment components of the assessment system in both mathematics and English language arts are fully implemented statewide by each State in the consortium no later than the 2014–2015 school year;

5. Maximize the interoperability of assessments across technology platforms and the ability for States to switch their assessments from one technology platform to another by—

(a) Developing all assessment items to an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period, without non-standard extensions or additions;[7] and

(b) Producing all student-level data in a manner consistent with an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period;

6. Unless otherwise protected by law or agreement as proprietary information, make any assessment content (*i.e.,* assessments and assessment items) developed with funds from this grant category freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided they comply with consortium or State requirements for test or item security;

7. Use technology to the maximum extent appropriate to develop, administer, and score assessments and report assessment results;

8. Use funds from this grant category only for the design, development, and evaluation of the assessment system. An eligible applicant awarded a grant under this category may not use funds for the administration of operational assessments;

9. Comply with the requirements of 34 CFR 75.129, which specifies that—

(a) The applicant (*i.e.,* the State applying on behalf of the consortium, or the consortium if established as a separate legal entity and applying on its own behalf) is legally responsible for—

(i) The use of all grant funds;

(ii) Ensuring that the project is carried out by the consortium in accordance with Federal requirements; and

(iii) Ensuring that indirect cost funds are determined as required under 34 CFR 75.564(e); and

(b) Each member of the consortium is legally responsible to—

(i) Carry out the activities it agrees to perform; and

(ii) Use any grant funds it receives under the consortium's Memoranda of Understanding or other binding agreements in accordance with Federal requirements that apply to the grant;

10. Obtain approval from the Department of any third-party organization or entity that is responsible for managing funds received under this grant category; and

11. Identify any current assessment requirements in Title I of the ESEA that would need to be waived in order for member States to fully implement the proposed assessment system.

B. *High School Course Assessment Programs:*

Priorities: For the High School Course Assessment Programs grant category, we are establishing the following priorities for the FY 2010 grant competition only in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority. An eligible applicant should address this priority throughout the application narrative.

The priority is:

High School Course Assessment Programs. Under this priority, the Department supports the development of new and adapted assessments for high school courses that will be used by multiple States and are valid, reliable, and fair for their intended purposes and students. To meet this absolute priority, an eligible applicant must demonstrate in its application that it will develop and implement a high school course assessment program that—

(a) For each course in the assessment program—

(i) Measures student knowledge and skills against standards from a common set of college- and career-ready standards (as defined in this notice) in subjects for which such a set of standards exists, or otherwise against State or other rigorous standards;

(ii) As appropriate, elicits complex student demonstrations or applications of knowledge and skills;

(iii) Produces student achievement data (as defined in this notice) and student growth data (as defined in this notice) over a full academic year or course that can be used to inform—

(*A*) Determinations of individual principal and teacher effectiveness and professional development and support needs; and

(*B*) Teaching, learning, and program improvement; and

(iv) Is designed to assess the broadest possible range of students, including English learners (as defined in this notice) and students with disabilities (as defined in this notice);

(b) Includes assessments for multiple courses that will be implemented in each member State at a scale that will enable significant improvements in student achievement outcomes statewide; and

(c) Includes a process for certifying the rigor of each assessment in the assessment program and for ensuring that assessments of courses covering similar content have common expectations of rigor.

Competitive Preference Priorities: These priorities are competitive preference priorities. Consistent with 34 CFR 75.105(c)(2)(i), we award additional points to an application as specified in these priorities.

The priorities are:

1. *Focus on Preparing Students for Study in STEM-Related Fields.* The Department gives 10 competitive preference points to applications that include a high-quality plan to develop, within the grant period and with input from one or more four-year degree-granting IHEs, assessments for high school courses that comprise a rigorous course of study that is designed to prepare high school students for postsecondary study and careers in the STEM fields, including technology and engineering. Any such course of study may include cross-cutting or interdisciplinary STEM courses (*e.g.,* computer science, information technology, bioengineering) and be designed to address the needs of underrepresented groups.

An eligible applicant addressing this priority must, in addition to addressing the priority throughout the application narrative, provide a separate plan that describes—

(a) The courses for which assessments will be developed;

(b) How the courses comprise a rigorous course of study that is designed to prepare high school students for

[6] Eligible applicants awarded a grant under this program must comply with the Family Educational Rights and Privacy Act (FERPA) and 34 CFR Part 99, as well as State and local requirements regarding privacy.

[7] We encourage grantees under this competition to work during the grant period with the Department and the entities that set interoperability standards to extend those standards in order to make them more functional for assessment materials.

postsecondary study and careers in the STEM fields; and

(c) How input from one or more four-year degree-granting IHEs will be obtained in developing assessments for the courses.

We will award points to eligible applicants addressing this priority on an "all or nothing" basis (*i.e.,* 10 points or zero points). An eligible applicant may not use the same course of study to address both this priority and Competitive Preference Priority 2 (Focus on Career Readiness and Placement).

2. *Focus on Career Readiness and Placement.* The Department gives 10 competitive preference points to applications that include a high-quality plan to develop, within the grant period and with relevant business community participation and support, assessments for high school courses that comprise a rigorous course of study in career and technical education that is designed to prepare high school students for success on technical certification examinations or for postsecondary education or employment.

An eligible applicant addressing this priority must, in addition to addressing the priority throughout the application narrative, provide a separate plan that describes—

(a) The courses for which assessments will be developed;

(b) How the courses comprise a rigorous course of study in career and technical education that is designed to prepare high school students for success on technical certification examinations or for postsecondary education or employment; and

(c) How relevant business community participation and support will be obtained in developing assessments for the courses.

We will award points to eligible applicants addressing this priority on an "all or nothing" basis (*i.e.,* 10 points or zero points). An eligible applicant may not use the same course of study to address both this priority and Competitive Preference Priority 1 (Focus on Preparing Students for Study and Careers in STEM-Related Fields).

Requirements: For the High School Course Assessment Programs grant category, we are establishing the following requirements for the FY 2010 grant competition only in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Eligible Applicants: Eligible applicants are consortia of States.[8]

Eligibility Requirements:

To be eligible to receive an award under this category, an eligible applicant must—

1. Include a minimum of 5 governing States (as defined in this notice); and

2. Identify in its application a proposed project management partner and provide an assurance that the proposed project management partner is not partnered with any other eligible applicant applying for an award under this category.[9]

Application Requirements

An eligible applicant's application must—

1. Indicate, consistent with 34 CFR 75.128, whether—

(a) One member of the consortium is applying for a grant on behalf of the consortium; or

(b) The consortium has established itself as a separate eligible legal entity and is applying for a grant on its own behalf;

2. Be signed by—

(a) If one member of the consortium is applying for a grant on behalf of the consortium, the Governor, the State's chief school officer, and, if applicable, the president of the State board of education from that State; or

(b) If the consortium has established itself as a separate eligible legal entity and is applying for a grant on its own behalf, a representative of the consortium;

3. Include an assurance that—

(a) A competitive procurement process based on a "best value" selection[10] will be used for tasks related to assessment design and development; and

(b) All applicable Federal procurement requirements, including the requirements of 34 CFR 80.36, will be met;

4. Include, consistent with 34 CFR 75.128, for each State in the consortium, copies of all Memoranda of Understanding or other binding agreements. These binding agreements must—

(a) Detail the activities that members of the consortium will perform;

(b) Bind each member of the consortium to every statement and assurance made in the application;

(c) Include an assurance, signed by the State's chief procurement official (or designee), that the State has reviewed its applicable procurement rules and determined that it may participate in and make procurements through the consortium; and

(d) Be signed by the Governor, the State's chief school officer, and, if applicable, the president of the State board of education;

5. Include—

(a) An executive summary of the eligible applicant's proposed project;

(b) A theory of action that describes in detail the causal relationships between specific actions or strategies in the eligible applicant's proposed project and its desired outcomes for the proposed project, including improvements in student achievement and college- and career-readiness;

(c) A plan for designing and developing the proposed assessment program;

(d) A plan for research and evaluation of the proposed assessment program;

(e) A plan for implementing the proposed assessment program; and

(f) A project management plan (including a workplan and timeline); and

6. Include a budget that—

(a) Describes in detail how funds from this grant category and other resources will be used to design, develop, implement, and evaluate the proposed assessment program; and

(b) Does not exceed more than $30 million in funds from this grant category.

Program Requirements

An eligible applicant awarded a grant under this category must—

1. Evaluate the validity, reliability, and fairness of the assessments in its high school course assessment program;

2. Actively participate in any applicable technical assistance activities

[8] Consistent with section 14013 of the ARRA, the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[9] In selecting a proposed project management partner, an eligible applicant must comply with the requirements for procurement in 34 CFR 80.36. Due to the limited time period that eligible applicants have to select a proposed project management partner, we remind eligible applicants that they may, under 34 CFR 80.36, use informal procedures to select a proposed contractor for this purpose. For example, 34 CFR 80.36(d)(1) authorizes simple informal procedures to select contractors under the simplified acquisition threshold of $100,000; the regulations only require that the eligible applicant request offers from an adequate number of qualified sources. In addition, even if the eligible applicant expects that the proposed project management partner would cost more than $100,000, the regulations recognize special cases where a contractor must be selected within a very limited time period. Again, the eligible applicant must request proposals from an adequate number of qualified sources and select the contractor whose proposal is most advantageous to the program, considering price and other selection factors; in these situations, if informal solicitation does not result in an adequate number of proposals, the eligible applicant may select a single bidder so long as the eligible applicant documents the facts that formed the basis for its decision. 34 CFR 80.36(d)(1), (d)(3), and (d)(4).

[10] For example, section 2.101 of the FAR defines "best value" as the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

conducted or facilitated by the Department or its designees, including periodic expert reviews, collaboration with other consortia that receive funds under this program, and other activities as determined by the Department;

3. Work with the Department to develop a strategy to make student-level data that result from the assessment program available on an ongoing basis for research, including for prospective linking, validity, and program improvement studies; [11]

4. Ensure that at least one course assessment developed under the high school course assessment program will be implemented in each State in the consortium no later than the 2013–2014 school year and that all assessments in the assessment program will be operational no later than the 2014–2015 school year;

5. To the extent that technology is used, maximize the interoperability of assessments across technology platforms and the ability for States to switch their assessments from one technology platform to another by—

(a) Developing all assessment items to an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period, without non-standard extensions or additions; [12] and

(b) Producing all student-level data in a manner consistent with an industry-recognized open-licensed interoperability standard that is approved by the Department during the grant period;

6. Unless otherwise protected by law or agreement as proprietary information, make any assessment content (*i.e.,* assessments and assessment items) developed with funds from this grant category freely available to States, technology platform providers, and others that request it for purposes of administering assessments, provided they comply with consortium or State requirements for test or item security;

7. Use funds from this grant category only for the design, development, and evaluation of the assessment program. An eligible applicant awarded a grant under this category may not use funds for the administration of operational assessments;

8. Comply with the requirements of 34 CFR 75.129, which specifies that—

(a) The applicant (*i.e.,* the State applying on behalf of the consortium, or the consortium if established as a separate legal entity and applying on its own behalf) is legally responsible for—

(i) The use of all grant funds;

(ii) Ensuring that the project is carried out by the consortium in accordance with Federal requirements; and

(iii) Ensuring that indirect cost funds are determined as required under 34 CFR 75.564(e); and

(b) Each member of the consortium is legally responsible to—

(i) Carry out the activities it agrees to perform; and

(ii) Use any grant funds it receives under the consortium's Memoranda of Understanding or other binding agreements in accordance with Federal requirements that apply to the grant; and

9. Obtain approval from the Department of any third-party organization or entity that is responsible for managing funds received under this grant category.

C. *Definitions:* For the Comprehensive Assessment Systems and High School Course Assessment Programs grant categories, we are establishing the following definitions for the FY 2010 grant competition only in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Accommodations means changes in the administration of an assessment, including but not limited to changes in assessment setting, scheduling, timing, presentation format, response mode, and combinations of these changes, that do not change the construct intended to be measured by the assessment or the meaning of the resulting scores. Accommodations must be used for equity in assessment and not provide advantage to students eligible to receive them.

Achievement standard means the level of student achievement on summative assessments that indicates that (a) for the final high school summative assessments in mathematics or English language arts, a student is college- and career-ready (as defined in this notice); or (b) for summative assessments in mathematics or English language arts at a grade level other than the final high school summative assessments, a student is on track to being college- and career-ready (as defined in this notice). An achievement standard must be determined using empirical evidence over time.

College- and career-ready (or readiness) means, with respect to a student, that the student is prepared for success, without remediation, in credit-bearing entry-level courses in an IHE (as defined in section 101(a) of the HEA), as demonstrated by an assessment score that meets or exceeds the achievement standard (as defined in this notice) for the final high school summative assessment in mathematics or English language arts.

Common set of college- and career-ready standards means a set of academic content standards for grades K–12 that (a) define what a student must know and be able to do at each grade level; (b) if mastered, would ensure that the student is college- and career-ready (as defined in this notice) by the time of high school graduation; and (c) are substantially identical across all States in a consortium. A State may supplement the common set of college- and career-ready standards with additional content standards, provided that the additional standards do not comprise more than 15 percent of the State's total standards for that content area.

Direct matriculation student means a student who entered college as a freshman within two years of graduating from high school.

English learner means a student who is an English learner as that term is defined by the consortium. The consortium must define the term in a manner that is uniform across member States and consistent with section 9101(25) of the ESEA.

Governing State means a State that (a) is a member of only one consortium applying for a grant in the competition category, (b) has an active role in policy decision-making for the consortium, and (c) is committed to using the assessment system or program developed by the consortium.

Level 1 budget module means a budget module for which an eligible applicant is seeking funds under the Comprehensive Assessment Systems grant category that (a) is necessary to delivering operational summative assessments in both mathematics and English language arts no later than school year 2014–2015, or (b) is otherwise necessary to the eligible applicant's proposed project and consistent with the eligible applicant's theory of action.

Level 2 budget module means any budget module for which an eligible applicant is seeking funds under the Comprehensive Assessment Systems grant category other than a Level 1 budget module. An eligible applicant must prioritize Level 2 budget modules in the order of importance to the implementation of the proposed project.

Moderation system means a system for ensuring that human scoring of complex item types, such as extended

[11] Eligible applicants awarded a grant under this program must comply with FERPA and 34 CFR Part 99, as well as State and local requirements regarding privacy.

[12] We encourage grantees under this competition to work during the grant period with the Department and the entities that set interoperability standards to extend those standards in order to make them more functional for assessment materials.

responses or performance tasks, is accurate, consistent across schools and States, and fair to all students.

On track to being college- and career-ready[13] means, with respect to a student, that the student is performing at or above grade level such that the student will be college- and career-ready (as defined in this notice) by the time of high school graduation, as demonstrated by an assessment score that meets or exceeds the achievement standard (as defined in this notice) for the student's grade level on a summative assessment in mathematics or English language arts.

Performance level descriptor means a statement or description of a set of knowledge and skills exemplifying a level of performance associated with a standard.

Student achievement data means data regarding an individual student's mastery of tested content standards. Student achievement data from summative assessment components must be reported in a way that can be reliably aggregated across multiple students at the subgroup,[14] classroom, school, LEA, and State levels.

Student growth data means data regarding the change in student achievement data (as defined in this notice) between two or more points in time. Student growth data from summative assessment components must be reported in a way that can be reliably aggregated across multiple students at the subgroup, classroom, school, LEA, and State levels and over a full academic year or course.

Student with a disability means, for purposes of this competition, a student who has been identified as a student with a disability under the Individuals with Disabilities Education Act, as amended (IDEA), except for a student with a disability who is eligible to participate in alternate assessments based on alternate academic achievement standards consistent with 34 CFR 200.6(a)(2).

Through-course summative assessment means an assessment system component or set of assessment system components that is administered periodically during the academic year. A student's results from through-course summative assessments must be combined to produce the student's total summative assessment score for that academic year.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, definitions, and selection criteria. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the Race to the Top Assessment Program under section 14006 of the ARRA and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priorities, requirements, definitions, and selection criteria under section 437(d)(1) of GEPA. (We note that, as discussed earlier, the design of this grant competition has benefited significantly from a series of public and expert input meetings held by the Department.) These priorities, requirements, definitions, and selection criteria will apply to the FY 2010 grant competition only.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14006, Public Law 111–5.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $350,000,000.

Estimated Size of Awards:

A. Comprehensive Assessment Systems: $160,000,000.

B. High School Course Assessment Programs: $30,000,000.

Estimated Number of Awards

A. *Comprehensive Assessment Systems:* 1–2 awards.

B. *High School Course Assessment Programs:* 1 award.

Note: The Department is not bound by any estimates in this notice. The Department will determine the number of awards to be made in each grant category based on the quality of applications received consistent with the selection criteria. It will also determine the size of an award made to an eligible applicant based on a review of the eligible applicant's budget. However, with respect to Comprehensive Assessment Systems grants, an eligible applicant may not submit Level 1 budget modules exceeding $150 million in total, and with respect to High School Course Assessment Programs grants, an eligible applicant may not submit a budget exceeding $30 million. Applications requesting budget amounts that exceed these maximum amounts will not be reviewed for funding. An eligible applicant awarded a Comprehensive Assessment Systems grant will receive funding for the Level 1 budget modules identified in its application, and may receive funding for one or more Level 2 budget modules identified in its application if those modules do not exceed the maximum amount of $10 million each and funds are available. The Department will rank and fund separately applications under each grant category. The Department may use any unused funds designated for this competition to make awards in Phase 2 of the Race to the Top Fund Program (CFDA Number 84.395A).

Project Period: Up to 48 months.

III. Application and Submission Information

A. *Address to Request Application Package:* Prospective applicants can obtain an application package for either grant category in this competition via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/racetothetop-assessment/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

Prospective applicants can also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If requesting an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.395B (Comprehensive Assessment Systems grants) or CFDA Number 84.395C (High School Course Assessment Programs grants).

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VI of this notice.

B. *Content and Form of Application Submission:* Requirements concerning

[13] The term *on track to being college- and career-ready* is used in place of the term "proficiency" used in section 1111(b)(3) of the ESEA.

[14] Eligible applicants receiving funds under this competition must aggregate data using the student subgroups in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged, except that such aggregation is not required in a case in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student). When using the term "subgroup" throughout this notice, we mean these student subgroups.

the content of an application, together with the forms an applicant must submit, are in the application package for each grant category in this competition.

Page Limit: The application narrative (Part I.G of the application for each grant category) is where the applicant addresses the selection criteria that reviewers use to evaluate applications. The Department recommends that applicants limit the application narrative for a Comprehensive Assessment Systems grant to no more than 60 total pages, and for a High School Course Assessment Programs grant to no more than 45 total pages, using the following standards:

- A page is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Each page is numbered.
- Line spacing is set to 1.5 spacing, and the font used is 12 point Times New Roman font.

An applicant must limit the executive summary of its proposed project (Part I.D of the application for each grant category) to no more than two pages using the standards above. We will not read information on any pages that exceed this page limit.

C. *Submission Dates and Times:*

Applications Available: April 9, 2010.

Deadline for Notice of Intent to Apply: April 29, 2010.

The Department will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of applications we will receive. Therefore, we strongly encourage each prospective applicant to send an e-mail notice of its intent to apply for funding under a grant category in this competition to the e-mail address *racetothetop.assessment@ed.gov* by April 29, 2010. The notice of intent to apply is optional; an applicant may still submit an application if it has not notified us of its intention to apply.

Date of Technical Assistance Meeting for Prospective Applicants: April 22, 2010.

To assist prospective applicants in preparing an application and to respond to questions, the Department will host a Technical Assistance Meeting for Prospective Applicants on April 22, 2010. Detailed information about this meeting (including the meeting location) will be posted on the Department's Web site at *http://www.ed.gov/programs/racetothetop-assessment.* Attendance at the meeting is strongly encouraged. Announcements of any other technical assistance opportunities for prospective applicants will also be available at the Web site above.

Deadline for Transmittal of Applications: June 23, 2010.

An applicant must submit an original and one paper copy of its application for either grant category under this competition. An applicant may submit its application by mail or hand delivery. E-mailed applications will not be read. For more information about how to submit an application, please refer to the *Other Submission Requirements* later in this section.

The Department will not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VI of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 23, 2010.

D. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for each grant category in this competition.

E. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Requirements* and *Applicable Regulations* in section I of this notice.

F. *Other Submission Requirements:* An applicant must submit an original and one paper copy of its application for either grant category under this competition. An applicant may submit its application by mail or hand delivery. E-mailed applications will not be read.

If an applicant's application includes content that cannot be presented in a paper copy, the applicant may submit that content separately in one or more electronic files on a CD–ROM or DVD–ROM. The application content must reside on the CD–ROM or DVD–ROM; the Department will not review material in external references or links. The files may be in any of the following formats: .DOC/.DOCX (Microsoft Word Document), .PDF (Adobe Portable Document Format), .PPT/.PPTX (Microsoft Powerpoint), .HTML (Hypertext Markup Language), .JPEG (Joint Photographic Experts Group Image), .GIF (Graphics Interchange Format), .PNG (Portable Network Graphics), .TIFF (Tagged Image Format), .XLS/.XLSX (Microsoft Excel), .XML/.XSD (Extensible Markup Language/XML Schema), .CSV (Comma Separated Values), .TXT (Text File), and .ZIP (Compressed Package). If an applicant is submitting data files, it should include in its application a description or schema of the data elements within the files. If an applicant submits a file type other than the types specified in this paragraph, the Department will not review that material. Applicants should not password-protect these files. Each electronic file name should clearly identify the part of the application to which the content is responding. The CD–ROM or DVD–ROM should be clearly labeled with the applicant's name and any other relevant information. An applicant must provide 10 copies of any CD–ROM or DVD–ROM it submits with the original and paper copy of its application.

The Department must receive all applications by 4:30 p.m., Washington, DC time, on the application deadline date. We will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that applicants arrange for mailing or hand delivery of their applications in advance of the application deadline date.

(1) *Submission of Applications by Mail.* An applicant for either grant category may submit its application (*i.e.,* the original and one paper copy of the application and, if necessary, 10 copies of an accompanying CD–ROM or DVD–ROM with any electronic files of application content that cannot be included in the original or paper copy of the application) by mail (either through the U.S. Postal Service or a commercial carrier). We must receive applications no later than 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, to avoid delays, we strongly recommend sending applications via overnight mail. Mailed applications for Comprehensive Assessment Systems grants must be mailed to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.395B), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260. Mailed applications for High School Course Assessment Programs grants must be mailed to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.395C), LBJ Basement Level

1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

If we receive an application after the application deadline, we will not consider that application.

(2) *Submission of Applications by Hand Delivery.* An applicant for either grant category may submit its application (*i.e.,* the original and one paper copy of the application and, if necessary, 10 copies of an accompanying CD–ROM or DVD–ROM with any electronic files of application content that cannot be included in the original or paper copy of the application) by hand delivery (including via a courier service). We must receive applications no later than 4:30 p.m., Washington, DC time, on the application deadline date. Hand-delivered applications for Comprehensive Assessment Systems grants must be received at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.395B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. Hand-delivered applications for High School Course Assessment Programs grants must be received at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.395C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

If we receive an application after the application deadline, we will not consider that application.

(3) *Envelope Requirements and Receipt:* When an applicant submits its application, whether by mail or hand delivery—

(a) It must indicate on the envelope that the CFDA number of the competition under which it is submitting its application is 84.395B (for Comprehensive Assessment Systems grants) or 84.395C (for High School Course Assessment Programs grants); and

(b) The Application Control Center will mail to the applicant a notification of receipt of the grant application. If the applicant does not receive this notification, it should call Joyce Mays at the U.S. Department of Education Application Control Center at (202) 245–6288.

In accordance with 34 CFR 75.216(b) and (c), an application will not be evaluated for funding if the applicant does not comply with all of the procedural rules that govern the submission of the application or the application does not contain the information required under the program.

Paperwork Reduction Act of 1995

The requirements and selection criteria established in this notice require the collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An emergency review has been requested in accordance with the Act (44 U.S.C. 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by OMB has been requested by April 5, 2010.

Burden Hour Estimates for Comprehensive Assessment Systems Grants: We estimate 4 applicants for Comprehensive Assessment Systems grants, and that each applicant would spend approximately 502.25 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all applicants for Comprehensive Assessment Systems grants is an estimated 2,009 hours (4 applicants times 502.25 hours equals 2,009 hours).

Burden Hour Estimates for High School Course Assessment Programs Grants: We estimate 2 applicants for High School Course Assessment Programs grants, and that each applicant would spend approximately 363.25 hours of staff time to address the application requirements and criteria, prepare the application, and obtain necessary clearances. The total number of hours for all applicants for High School Course Assessment Programs grants is an estimated 726.5 hours (2 applicants times 363.25 hours equals 726.5 hours).

Total Cost Estimates: Across both grant categories, we estimate the average total cost per hour of the staff who carry out this work to be $30.00 an hour. The total estimated cost for all applicants under both grant categories would be $82,065 ($30.00 times 2,735.5 (2,009 + 726.5) hours equals $82,065).

IV. Application Review Information

A. *Comprehensive Assessment Systems:*

Selection Criteria: For the Comprehensive Assessment Systems category, we are establishing the following selection criteria for the FY 2010 grant competition only, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). Eligible applicants may receive up to 200 total points based on the extent to which their applications address these selection criteria. The number of points that may be awarded for each criterion is indicated in parentheses next to the criterion.

(A)(1) *Consortium Governance* (up to 20 points). The extent to which the consortium's proposed governance structure will enable the successful design, development, and implementation of the proposed assessment system. In determining the extent to which the consortium's proposed governance structure will enable the successful design, development, and implementation of the proposed assessment system, we will consider—

(a) The consortium's vision, goals, role, and key deliverables (*e.g.,* assessment components, scoring and moderation system, professional development activities), and the consistency of these with the consortium's theory of action;

(b) The consortium's structure and operations, including—

(i) The organizational structure of the consortium and the differentiated roles that a member State may hold (*e.g.,* lead State, governing State (as defined in this notice), advisory State);

(ii) For each differentiated role, the rights and responsibilities (including the level of commitment to adopting and implementing the assessment system) associated with the role;

(iii) The consortium's method and process (*e.g.,* consensus, majority) for making different types of decisions (*e.g.,* policy, operational);

(iv) The protocols by which the consortium will operate, including the protocols for member States to change roles or leave the consortium and for new member States to join the consortium;

(v) The consortium's plan, including the process and timeline, for setting key policies and definitions for the proposed assessment system, including a common set of college- and career-ready standards (as defined in this notice), a common set of performance level descriptors (as defined in this notice), a common set of achievement standards (as defined in this notice), common assessment administration procedures, common item release and test security policies, a common definition of "English learner," and a common set of policies and procedures for accommodations (as defined in this notice) and student participation; and

(vi) The consortium's plan for managing funds received under this grant category;

(c) The terms and conditions of the Memoranda of Understanding or other binding agreements executed by each member State, including—

(i) The consistency of the terms and conditions with the consortium's governance structure and the State's role in the consortium; and

(ii) The State's commitment to and plan for identifying any existing barriers in State law, statute, regulation, or policy to implementing the proposed assessment system and to addressing any such barriers prior to full implementation of the summative assessment components of the system; and

(d) The consortium's procurement process, and evidence of each member State's commitment to that process.

(A)(2) *Theory of Action* (up to 5 points). The extent to which the eligible applicant's theory of action is logical, coherent, and credible, and will result in improved student academic outcomes. In determining the extent to which the theory of action has these attributes, we will consider the description of, and rationale for—

(a) Each component of the proposed assessment system and the relationship of the component to other components in the system;

(b) How the assessment results produced by each component will be used;

(c) How the assessments and assessment results will be incorporated into a coherent educational system (*i.e.,* a system that includes standards, assessments, curriculum, instruction, and professional development); and

(d) How the educational system as a whole will improve student achievement and college- and career-readiness (as defined in this notice).

(A)(3) *Assessment System Design* (up to 55 points). The extent to which the design of the eligible applicant's proposed assessment system is innovative, feasible, and consistent with the theory of action. In determining the extent to which the design has these attributes, we will consider—

(a) The number and types of components (*e.g.,* through-course summative assessments (as defined in this notice), end-of-year summative assessments, formative assessments, interim assessments) in mathematics and in English language arts in the assessment system;

(b) For the assessment system as a whole—

(i) How the assessment system will measure student knowledge and skills against the full range of the college- and career-ready standards, including the standards against which student achievement has traditionally been difficult to measure; and provide an accurate measure of student achievement, including for high- and low-performing students, and an accurate measure of student growth over a full academic year or course;

(ii) How the assessment system will produce the required student performance data (*i.e.,* student achievement data and student growth data (both as defined in this notice) that can be used to determine whether individual students are college- and career-ready (as defined in this notice) or on track to being college- and career-ready (as defined in this notice));

(iii) How the assessment system will be accessible to all students, including English learners and students with disabilities, and include appropriate accommodations (as defined in this notice) for students with disabilities and English learners; and

(iv) How and when during the academic year different types of student data will be available to inform and guide instruction, interventions, and professional development; and

(c) For each component in mathematics and in English language arts in the assessment system—

(i) The types of data produced by the component, including student achievement data (as defined in this notice), student growth data (as defined in this notice), and other data;

(ii) The uses of the data produced by the component, including determining whether individual students are college- and career-ready (as defined in this notice) or on track to being college- and career-ready (as defined in this notice); informing determinations of school effectiveness for the purposes of accountability under Title I of the ESEA; informing determinations of individual principal and teacher effectiveness for the purposes of evaluation; informing determinations of principal and teacher professional development and support needs; informing teaching, learning, and program improvement; and other uses;

(iii) The frequency and timing of administration of the component, and the rationale for these;

(iv) The number and types of items (*e.g.,* performance tasks, selected responses, brief or extended constructed responses) and the distribution of item types within the component, including the extent to which the items will be varied and elicit complex student demonstrations or applications of knowledge and skills (descriptions should include a concrete example of each item type proposed); and the rationale for using these item types and their distributions;

(v) The component's administration mode (*e.g.,* paper-and-pencil, computer-based, or other electronic device), and the rationale for the mode;

(vi) The methods for scoring student performance on the component, the estimated turnaround times for scoring, and the rationale for these; and

(vii) The reports produced based on the component, and for each report, its intended use, target audience (*e.g.,* students, parents, teachers, administrators, policymakers), and the key data it presents.

(A)(4) *Assessment System Development* (up to 35 points). The extent to which the eligible applicant's plan for developing the proposed assessment system will ensure that the assessment system is ready for wide-scale administration in a manner that is timely, cost-effective, and consistent with the proposed design and incorporates a process for ongoing feedback and improvement. In determining the extent to which the development plan has these attributes, we will consider—

(a) The approaches for developing assessment items (*e.g.,* evidence centered design, universal design for learning [15]) and the rationale for using those approaches; the development phases and processes to be implemented consistent with the approaches; and the types of personnel involved in each development phase and process (*e.g.,* practitioners, content experts, assessment experts, experts in assessing English learners, experts in assessing students with disabilities, psychometricians, cognitive scientists, IHE representatives, career and technical education experts);

(b) The approach and strategy for designing and developing accommodations (as defined in this notice), accommodation policies, and methods for standardizing the use of those accommodations for—

(i) English learners; and

(ii) Students with disabilities;

(c) The approach and strategy for ensuring scalable, accurate, and consistent scoring of items, including the approach and moderation system (as defined in this notice) for any human-scored items that are part of the summative assessment components and the extent to which teachers are trained and involved in the scoring of assessments;

(d) The approach and strategy for developing the reporting system; and

(e) The overall approach to quality control; and the strategy for field testing

[15] "Universal design for learning" is used as that term is defined in section 103(24) of the HEA.

assessment items, accommodations, scoring systems, and reporting systems, including, with respect to assessment items and accommodations, the use of representative sampling of all types of student populations, taking into particular account high- and low-performing students and different types of English learners and students with disabilities.

(A)(5) *Research and Evaluation* (up to 30 points). The extent to which the eligible applicant's research and evaluation plan will ensure that the assessments developed are valid, reliable, and fair for their intended purposes and for all student subgroups. In determining the extent to which the research and evaluation plan has these attributes, we will consider—

(a) The plan for identifying and employing psychometric techniques suitable to verify, as appropriate to each assessment component, its construct, consequential, and predictive validity; external validity; reliability; fairness; precision across the full performance continuum; and comparability within and across grade levels; and

(b) The plan for determining whether the assessments are being implemented as designed and the theory of action is being realized, including whether the intended effects on individuals and institutions are being achieved.

(A)(6) *Professional Capacity and Outreach* (up to 15 points). The extent to which the eligible applicant's plan for implementing the proposed assessment system is feasible, cost-effective, and consistent with the theory of action. In determining the extent to which the implementation plan has these attributes, we will consider—

(a) The plan for supporting teachers and administrators in implementing the assessment system and for developing, in an ongoing manner, the professional capacity to use the assessments and results to inform and improve instructional practice; and

(b) The strategy and plan for informing the public and key stakeholders (including legislators and policymakers) in each member State about the assessment system and for building support for the system from the public and those stakeholders.

(A)(7) *Technology Approach* (up to 10 points). The extent to which the eligible applicant is using technology effectively to improve the quality, accessibility, cost-effectiveness, and efficiency of the proposed assessment system. In determining the extent to which the eligible applicant is using technology effectively, we will consider—

(a) The description of, and rationale for—

(i) The ways in which technology will be used in assessment design, development, administration, scoring, and reporting;

(ii) The types of technology to be used (including whether the technology is existing and commercially-available or is being newly developed); and

(iii) How other States or organizations can re-use in a cost-effective manner any technology platforms and technology components developed under this grant; and

(b) How technology-related implementation or deployment barriers will be addressed (*e.g.,* issues relating to local access to Internet-based assessments).

(A)(8) *Project Management* (up to 30 points). The extent to which the eligible applicant's project management plan will result in implementation of the proposed assessment system on time, within budget, and in a manner that is financially sustainable over time. In determining the extent to which the project management plan has these attributes, we will consider—

(a) The quality, qualifications, and role of the project management partner, as evidenced by its mission, date of founding, size, experience (including past success in implementing similar projects), and key personnel assigned to this project (including their names, curricula vitae, roles, percent of time dedicated to this project, and experience in managing similar projects);

(b) The project workplan and timeline, including, for each key deliverable (*e.g.,* assessment component, scoring and moderation system, professional development activities), the major milestones, deadlines, and entities responsible for execution; and the approach to identifying, managing, and mitigating risks associated with the project;

(c) The extent to which the eligible applicant's budget—

(i) Clearly identifies Level 1 budget modules (as defined in this notice) and any Level 2 budget modules (as defined in this notice);

(ii) Is adequate to support the development of an assessment system that meets the requirements of the absolute priority; and

(iii) Includes costs that are reasonable in relation to the objectives, design, and significance of the proposed project and the number of students to be served; and

(d) For each member State, the estimated costs for the ongoing administration, maintenance, and enhancement of operational assessments in the proposed assessment system and a plan for how the State will fund the assessment system over time (including by allocating to the assessment system funds for existing State or local assessments that will be replaced by assessments in the system).

B. *High School Course Assessment Programs:*

Selection Criteria: For the High School Course Assessment Programs category, we are establishing the following selection criteria for the FY 2010 grant competition only, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). Eligible applicants may receive up to 200 total points based on the extent to which their applications address these selection criteria. The total number of points that may be awarded for each criterion and the number of points that may be awarded for each factor within a criterion are indicated in parentheses next to the criterion or factor.

(B)(1) *Consortium Governance* (up to 30 points). The extent to which the consortium's proposed governance structure will enable the successful design, development, and implementation of the proposed high school course assessment program. In determining the extent to which the consortium's proposed governance structure will enable the successful design, development, and implementation of the proposed assessment program, we will consider—

(a) The consortium's vision, goals, role, and key deliverables (*e.g.,* assessments, scoring and moderation system, certification system, professional development activities), and the consistency of these with the consortium's theory of action;

(b) The consortium's structure and operations, including—

(i) The organizational structure of the consortium and the differentiated roles that a member State may hold (*e.g.,* lead State, governing State (as defined in this notice), advisory State);

(ii) For each differentiated role, the rights and responsibilities (including the level of commitment to adopting and implementing the assessment program) associated with the role;

(iii) The consortium's method and process (*e.g.,* consensus, majority) for making different types of decisions (*e.g.,* policy, operational);

(iv) The protocols by which the consortium will operate, including the protocols for member States to change roles or leave the consortium and for new member States to join the consortium;

(v) The key policies and definitions to which all member States will adhere, the rationale for choosing these policies and definitions, and the consortium's

plan (including the process and timeline) for developing them; and

(vi) The consortium's plan for managing funds received under this grant category;

(c) The terms and conditions of the Memoranda of Understanding or other binding agreements executed by each member State, including the consistency of the terms and conditions with the consortium's governance structure and the State's role in the consortium; and

(d) The consortium's procurement process, and evidence of each member State's commitment to that process.

(B)(2) *Theory of Action* (up to 5 points). The extent to which the eligible applicant's theory of action is logical, coherent, and credible, and will result in improved academic outcomes for high school students across the States in the consortium. In determining the extent to which the theory of action has these attributes, we will consider the description of and rationale for—

(a) How the proposed high school course assessment program will be incorporated into a coherent high school educational system (*i.e.*, a system that includes standards, assessments, curriculum, instruction, and professional development);

(b) How the assessment program's rigor will be demonstrated and maintained over time;

(c) How the assessment program will cover diverse course offerings that provide a variety of pathways to students; and

(d) How the assessment program will be implemented at a scale that, across the States in the consortium, increases access to rigorous courses for students who have not typically had such access, and broadly improves student achievement and college and career readiness (as defined in this notice).

(B)(3) *Course Assessment Program Design and Development* (up to 60 points). The extent to which the design and development of the eligible applicant's proposed high school assessment program is feasible, scalable, and consistent with the theory of action. In determining the extent to which the design has these attributes, we will consider—

(a) The high school courses for which the consortium will implement assessments; the rationale for selecting those courses, including a need to increase access to rigorous courses for students who have not typically had such access; and the processes by which new high school course assessments will be added to the assessment program over time and existing course assessments will be updated and refreshed;

(b) How the assessments will measure student knowledge and skills against standards from a common set of college- and career-ready standards (as defined in this notice) in subjects for which such a set of standards exists, or otherwise against State or other rigorous standards;

(c) How the consortium will certify the rigor of each assessment in the assessment program, whether the assessment is new or adapted; and how the consortium will maintain consistent and high levels of rigor over time; and

(d) The general design and development approach for course assessments, including—

(i) The number and types of components (*e.g.*, mid-term tests, through-course summative assessments (as defined in this notice), end-of-course assessments) in a high school course assessment;

(ii) The extent to which, and, where applicable, the approach for ensuring that, assessment items will be varied and elicit complex student demonstrations or applications of knowledge and skills;

(iii) How the assessments will produce student achievement data (as defined in this notice) and student growth data (as defined in this notice);

(iv) The approach and strategy for ensuring scalable, accurate, and consistent scoring of assessments, and the extent to which teachers are trained and involved in the scoring of assessments; and

(v) How the course assessments will be accessible to the broadest possible range of students, including English learners and students with disabilities, and include appropriate accommodations (as defined in this notice) for students with disabilities and English learners.

(B)(4) *Research and Evaluation* (up to 25 points). The extent to which the eligible applicant's research and evaluation plan will ensure that the assessments developed are valid, reliable, and fair for their intended purposes and for all students. In determining the extent to which the research and evaluation plan has these attributes, we will consider—

(a) The plan for verifying validity, reliability, and fairness; and

(b) The plan for determining whether the assessments are being implemented as designed and the theory of action is being realized, including whether the intended effects on students and schools are being achieved.

(B)(5) *Course Assessment Program Implementation* (up to 45 points). The extent to which the eligible applicant's plan for implementing the proposed high school course assessment program will result in increased student enrollment in courses in the assessment program (and therefore improved student academic outcomes) in each member State. In determining the extent to which the implementation plan has these attributes, we will consider—

(a) The approach to be used in each member State for promoting participation in the high school course assessment program by high schools, by teachers, and by students (*e.g.*, voluntary participation, mandatory participation, incentive programs); the plan for implementing the approach, including goals, major activities, timelines, and entities responsible for execution; and the expected participation levels in each member State and across the consortium overall, including—

(i) The number and percentage of high schools expected to implement at least one of the assessments in the high school course assessment program in each of five consecutive years beginning with the 2013–2014 school year;

(ii) For each assessment in the assessment program, the number and percentage of high schools expected to implement the assessment in each of five consecutive years beginning with the 2013–2014 school year; and

(iii) The unduplicated number and percentage of high school students expected to take at least one assessment in the assessment program in each of five consecutive years beginning with the 2013–2014 school year; and

(b) The plan for supporting teachers and administrators in implementing the high school course assessment program and for developing, in an ongoing manner, the professional capacity to use the assessments and results to inform and improve instructional practice.

(B)(6) *Project Management* (up to 35 points). The extent to which the eligible applicant's project management plan will result in implementation of the proposed high school course assessment program on time, within budget, and in a manner that is financially sustainable over time. In determining the extent to which the project management plan has these attributes, we will consider—

(a) The quality, qualifications, and role of the project management partner, as evidenced by its mission, date of founding, size, experience (including past success in implementing similar projects), and key personnel assigned to this project (including their names, curricula vitae, roles, percent of time dedicated to this project, and experience in managing similar projects);

(b) The project workplan and timeline, including, for each key

deliverable (*e.g.*, assessments, scoring and moderation system, certification system, professional development activities), the major milestones, deadlines, and entities responsible for execution;

(c) The extent to which the eligible applicant's budget—

(i) Is adequate to support the development of a high school assessment program that meets the requirements of the absolute priority;

(ii) Includes costs that are reasonable in relation to the objectives, design, and significance of the proposed project and the number of students to be served; and

(d) For each member State, the estimated costs for the ongoing administration, maintenance, and enhancement of operational assessments in the proposed assessment program and a plan for how the State will fund the assessment program over time (including by allocating to the assessment program funds for existing State or local assessments that will be replaced by assessments in the program).

C. *Review and Selection Process:* The Department will screen applications that are received in accordance with the requirements in this notice and determine which applications will be reviewed for funding based on whether the applicant has met the eligibility requirements for the grant category and has requested a budget amount that does not exceed the maximum amount for the grant category as discussed in the *Award Information* section of this notice (section II). Applications from applicants that do not meet the eligibility requirements for the grant category or that request a budget amount that exceeds the maximum amount for the grant category will not be reviewed for funding. Reviewers [16] will then review and score applications using the competitive preference priorities, selection criteria and points included in this notice, and determine whether applications meet the Absolute Priority for the grant category. Applications that do not meet the Absolute Priority will not be considered for funding. The reviewers' scores will be averaged for each application that meets the Absolute Priority for the grant category, and those applications will be rank ordered in each grant category. After the review process is complete, the Secretary will select, consistent with 34 CFR 75.217, the grantees for each grant category after considering the rank order of applications, the funding available, and any other relevant information.

[16] The Department intends to use a panel of expert, independent reviewers who have been chosen from a pool of qualified assessment and management experts. The Department will thoroughly screen all reviewers for conflicts of interest in order to ensure a fair and competitive review process.

V. Award Administration Information

A. *Award Notices:* If an application is successful, the Department will notify the applicant's U.S. Representative and U.S. Senators and send the applicant a Grant Award Notification (GAN). We may also notify the applicant informally.

If an application is not evaluated or not selected for funding, we will notify the applicant.

B. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* in section I of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* in section I of this notice and include these and other specific conditions in the GAN. The GAN also incorporates the approved application as part of the applicant's binding commitments under the grant.

C. *Reporting:* Grantees (*i.e.*, applicants that receive an award) under this program must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may require more frequent performance reports under 34 CFR 75.720(c). At the end of the project period, grantees must also submit a final performance report, including financial information, as directed by the Secretary.

Grantees under this program must also meet the reporting requirements that apply to all programs funded under the ARRA. Specifically, grantees must submit reports, within 10 days after the end of each calendar quarter, that contain the information required under section 1512(c) of the ARRA in accordance with any guidance issued by the Office of Management and Budget or the Department (ARRA Division A, Section 1512(c)).

In addition, for each year of the program, grantees must comply with the requirements of ARRA Division A, Section 14008, and other performance reporting that the Department may require.

The Department will monitor grantees' progress in meeting project goals, objectives, timelines, and budget requirements; and may require grantees to enter into a cooperative agreement with the Department.

D. *Performance Measures:* We are establishing the following Government Performance and Results Act of 1993 (GPRA) performance measures for the Race to the Top Assessment Program:

Comprehensive Assessment Systems Grants

The performance measures for Comprehensive Assessment Systems grants are:

1. Number of States that have formally adopted a common set of college- and career-ready standards in mathematics and English language arts;
2. Number of States that have fully implemented the summative assessment components of the assessment systems;
3. Number of IHEs that are working with grantees to design and develop the final high school summative assessments in mathematics and English language arts;
4. Number of IHEs that have implemented policies that exempt from remedial courses and place into credit-bearing college courses students who meet the achievement standard for the final high school summative assessments in mathematics and English language arts and any other placement requirements; and
5. Percentage of direct matriculation students (as defined in this notice) in public IHEs who are enrolled in IHEs that are working with grantees to design and develop the final high school summative assessments in mathematics and English language arts and/or have implemented policies that exempt from remedial courses and place into credit-bearing college courses students who meet the achievement standard for the final high school summative assessments in mathematics and English language arts.

High School Course Assessment Programs Grants

The performance measures for High School Course Assessment Programs grants are:

1. Number of courses for which assessments have been developed under the high school assessment programs;
2. Number of States implementing the high school course assessment programs;
3. Percentage of LEAs in each State implementing at least one assessment in the high school course assessment programs;
4. Percentage of high schools in each State implementing at least one assessment in the high school course assessment programs;
5. For each assessment in the high school course assessment programs,

percentage of high schools in each State implementing the assessment;

6. Percentage of students in each State taking at least one assessment in the high school course assessment programs; and

7. Percentage of high schools in each State that incorporate courses in the high school course assessment programs into requirements for high school diplomas or certificates.

VI. Agency Contacts

For Further Information Contact: James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C108, Washington, DC 20202–6400. Telephone: (202) 453–7246 or by e-mail: *racetothetop.assessment@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VI of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 6, 2010.

Arne Duncan,

Secretary of Education.

[FR Doc. 2010–8176 Filed 4–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–1 and 84.133E–3.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities for two RERCs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes two priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes two priorities for RERCs: Universal Design in the Built Environment and Technologies for Children with Orthopedic Disabilities. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 10, 2010.

ADDRESSES: Address all comments about this notice to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 5142, Potomac Center Plaza, Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *donna.nangle@ed.gov.* You must include the term "Proposed Priorities for RERCs" and the priority title in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice of proposed priorities is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings. This notice proposes two priorities that NIDRR intends to use for RERC competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed.

Furthermore, NIDRR is under no obligation to make awards for these priorities. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 6030, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to

improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers Program (RERCs)

The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act by conducting advanced engineering research and development on innovative technologies that are designed to solve particular rehabilitation problems, or to remove environmental barriers. RERCs also demonstrate and evaluate such technologies, facilitate service delivery system changes, stimulate the production and distribution of new technologies and equipment in the private sector, and provide training opportunities.

General Requirements of RERCs

RERCs carry out research or demonstration activities in support of the Rehabilitation Act by—

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge: (a) To solve rehabilitation problems and to remove environmental barriers; and (b) to study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or
- Demonstrating and disseminating: (a) Innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas; and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; and
- Facilitating service delivery systems change through: (a) The development, evaluation, and dissemination of innovative, consumer-responsive, and individual- and family-centered models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services; and (b) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must be operated by, or in collaboration with, one or more institutions of higher education or one or more nonprofit organizations.

Each RERC must provide training opportunities, in conjunction with institutions of higher education or nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Each RERC must emphasize the principles of universal design in its product research and development. Universal design is "the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design" (North Carolina State University, 1997. *http://www.design.ncsu.edu/cud/about_ud/udprinciplestext.htm*).

Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priorities: This notice contains two proposed priorities.

Proposed Priority 1—Universal Design in the Built Environment

Background

Universal Design (UD) is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design (North Carolina State University, 1997). UD improves function, independence, and social participation for the entire population, including individuals with disabilities.

Examples of UD in the built environment include curb cuts, ramps, automatic doors, restrooms, and wayfinding strategies. There will be an increased need for products and environments with UD as the Baby Boom generation ages. Many in this generation will wish to remain in their own homes as they age (Bayer & Harper, 2000).

Past work supported by NIDRR has contributed substantially to the development of the field of UD. With NIDRR funding, the Center for Universal Design, in collaboration with other researchers and practitioners, developed and published the following "principles of universal design": Equitable use, flexibility in use, simple and intuitive use, perceptible information, tolerance for error, low physical effort, and size and space for approach and use (*http://design.ncsu.edu/cud/about_ud/udprinciples.htm*). These seven design principles have guided researchers, engineers, and planners in designing accessible housing and built environments (North Carolina State University, 1997). Among other outcomes, NIDRR funding also has contributed to the development of 35 new State and local visitability programs across the U.S. These programs apply UD principles in the new housing industry by incorporating an affordable, sustainable, and inclusive design approach for integrating basic accessibility features into all newly built homes. In addition, NIDRR funding contributed to the inclusion of UD principles by the New York City Department of Design and Construction in the official guide for all architects working for the city (Danford & Tauke, 2000).

Despite this progress, UD has experienced relatively slow adoption for several reasons. Until recently, engineers, designers, and manufacturers have focused on creating environments and products for individuals of average age, size, and ability and have argued that accommodations and design for all is too costly and complex (Danford & Tauke, 2000). In addition, university-level architecture and engineering programs do not generally include UD courses in their curriculum (Tauke, 2008). The UD field has been criticized for a lack of measurable implementation guidelines and a lack of explicit evidence-based UD practices (Steinfeld, 2006). Continued research and development in the area of UD is necessary to address these issues of UD adoption and viability. Curricula on UD for university-level engineering and design students, proper measurement tools, guidelines, evidence-based practices, and aesthetically pleasing and economically viable exemplars of UD are needed to demonstrate the efficacy of UD in facilitating independence and social participation among end users.

References

Bayer, A. & Harper, L. (2000). AARP, Fixing to stay: A national survey of housing and home modification issues, 24. See *http://assets.aarp.org/rgcenter/il/home_mod.pdf.*

Danford, G. & Tauke, B., eds. (2000). Universal Design: New York. New York, NY: Mayor's Office for People with Disabilities. See *http://www.ap.buffalo.edu/idea/PubIntro/index.asp.*

North Carolina State University. (1997). The principles of universal design (1997). Version 2.0—4/1/97. Compiled by advocates of universal design, listed in alphabetical order: Bettye Rose Connell, Mike Jones, Ron Mace, Jim Mueller, Abir Mullick, Elaine Ostroff, Jon Sanford, Ed Steinfeld, Molly Story, and Gregg Vanderheiden. North Carolina State University, The Center for Universal Design. See *http://*

design.ncsu.edu/cud/about_ud/udprinciples.htm.

Tauke, B. (2008). Universal Design—The time is now. See *http://www.uigarden.net/english/universal-design-the-time-is-now.*

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Engineering Research Center (RERC) on Universal Design (UD) in the Built Environment. Under this priority, the RERC must research, develop, evaluate, and promote UD in commercial and private facilities, outdoor environments, and housing. In addition, the RERC must create measurable UD standards and guidelines to facilitate the implementation of UD principles, create economically viable UD exemplars, aid in the development of evidence-based practices for UD, and help to design curricula on UD for university-level engineering and design students. The RERC must assist designers, builders, and manufacturers incorporate UD into their buildings and communities.

Proposed Priority 2—Technologies for Children With Orthopedic Disabilities

Background

As of December 1, 2007, 55,131 students from 6 to 17 years of age were reported to the Office of Special Education Programs in the U.S. Department of Education as having an orthopedic impairment (IDEA Data, 2007). The definition of orthopedic impairment in the IDEA regulations includes impairments caused by congenital anomalies, impairments caused by disease (*e.g.,* poliomyelitis, bone tuberculosis), and impairments from other causes (*e.g.,* cerebral palsy, amputations, and fractures or burns that cause contractures) (34 CFR 300.8(c)(8)).

Children with orthopedic disabilities often need assistance to perform a wide range of daily living tasks and activities. While family members, caregivers, and educators are the primary providers of this assistance, clinicians, researchers, and rehabilitation engineers are developing a growing number of technological products and interventions that assist children with orthopedic disabilities to function more independently.

NIDRR has contributed to the research and development of technologies for children with orthopedic disabilities for 20 years. Much of this work has centered on developing mobility and manipulation devices. For example, a NIDRR-funded RERC developed lightweight orthotic components, evaluated the effectiveness of functional electrical stimulation to improve gait, and studied which stage of development is the most beneficial to provide children with wheeled mobility. A NIDRR-funded RERC also developed the Easy Feed Hand, a prosthetic hand that is designed to evolve with the growth of the child, and made a new mobile arm support orthosis commercially available.

Continued efforts are needed to develop new products, technologies, and therapies that promote independence and functional rehabilitation. While initial research has evaluated assistive technologies for children's independence and manipulation, more research and development are needed to fully implement these technologies. For example, light-weight, adjustable pediatric wheelchairs can improve mobility (Meiser & McEwen, 2007) and provide children with better wheelchair performance with less exertion (Kirby *et al.,* 2008). Manipulation devices, whether wheelchair mounted or autonomous, can provide greater independence and allow children to better interact with their environment (Machiel Van der Loos & Reinkensmeyer, 2008). Several rehabilitation therapies have been successful for adults with orthopedic impairments, and there is emerging evidence to suggest that these therapies may improve mobility and manipulation among children. In this regard, rehabilitation therapies such as constraint-induced therapy (Taub, Ramey, DeLuca, & Echols, 2004; Gordon, Charles, & Wolf, 2006), robot-assisted therapy (Meyer-Heim *et al.,* 2009), and virtual reality-based therapy (Wille *et al.,* 2009) have yet to be fully developed, adapted, and analyzed for use with children.

References

Code of Federal Regulations. (2008). Education, 34 CFR 300.8.

Gordon, A.M., Charles, J., & Wolf, S.L. (2006). Efficacy of constraint-induced movement therapy on involved upper-extremity use in children with hemiplegic cerebral palsy is not age-dependent. Pediatrics, Mar, 117.

Individuals with Disabilities Education Act (IDEA) Data. (2007). See: *http://www.ideadata.org/arc_toc9.asp#partbCC* Table 1–4 and 1–5.

Kirby, R.L., MacDonald, B., Smith, C., MacLeod, D.A., & Webber, A. (2008). Comparison between a tilt-in-space wheelchair and a manual wheelchair equipped with a new rear anti-tip device from the perspective of the caregiver. Archives of Physical Medical Rehabilitation, September 89(9).

Machiel Van der Loos, H.F. & Reinkensmeyer, D.J. (2008). Rehabilitation and health care robotics. In B. Siciliano & O. Khatib (Eds.), Springer Handbook of Robotics (pp. 1235–1239). Springer Berlin Heidelberg.

Meiser, M.J. & McEwen, I.R. (2007). Lightweight and ultralight wheelchairs: Propulsion and preferences of two young children with spina bifida. Pediatric Physical Therapy, Fall 19(3).

Meyer-Heim, A., Ammann-Reiffer, C., Schmartz, A., Schäfer, J., Sennhauser, F.H., Heinen, F., Knecht, B., Dabrowski, E., & Borggraefe, I. (2009). Improvement of walking abilities after robotic-assisted locomotion training in children with cerebral palsy. Archives of Disease in Childhood, August 94(8).

Taub, E., Ramey, S., DeLuca, S. & Echols, K. (2004). Efficacy of constraint-induced movement therapy for children with cerebral palsy with asymmetric motor impairment. Pediatrics, 113(2).

Wille, D., Eng, K., Holper, L., Chevrier, E., Hauser, Y., Kiper, D., Pyk, P., Schlegel, S., & Meyer-Heim, A. (2009). Virtual reality-based paediatric interactive therapy system (PITS) for improvement of arm and hand function in children with motor impairment—a pilot study. Developmental Neurorehabilitation, January–March 12(1).

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Engineering Research Center (RERC) on Technologies for Children with Orthopedic Disabilities. This RERC will focus on innovative technologies and new knowledge that will improve the lives of children with orthopedic disabilities. Under this priority, the RERC must research, develop, apply, and evaluate new or existing technologies and approaches to improve the availability and usability of assistive devices for children with orthopedic disabilities. This work must contribute to the improvement of mobility and manipulation functions among children with orthopedic disabilities as they perform daily tasks and activities at home, at school, and in the community. In addition, the RERC must develop, test, and implement rehabilitation therapy technologies and strategies for use with children with orthopedic disabilities.

Requirements applicable to both proposed priorities: The RERC established under each of the proposed priorities in this notice must be

designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge relevant to its designated priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Increased innovation in technologies, products, environments, performance guidelines, and monitoring and assessment tools applicable to its designated priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, institutions of higher education, health care providers, or educators, as appropriate.

(4) Improved awareness and understanding of cutting edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with NIDRR, individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties regarding trends and evolving product concepts related to its designated priority research area.

(5) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to relevant public and private organizations, individuals with disabilities, employers, and schools on policies, guidelines, and standards related to its designated priority research area.

(6) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, under each priority, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the technology transfer and knowledge translation of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal, and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research, a plan to disseminate its research results to individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;
- Conduct a state-of-the-science conference on its designated priority research area in the fourth year of the project period, and publish a comprehensive report on the final outcomes of the conference in the fifth year of the project period; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of Costs and Benefits: The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These proposed priorities will generate new knowledge through research and development. Another benefit of these proposed priorities is that the establishment of new RERCs will improve the lives of individuals with disabilities. The new RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to fully participate in their communities.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in

text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 6, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–8166 Filed 4–8–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Notice: Request for Substantive Comments on the EAC's Procedural Manual for the Election Assistance Commission's Pilot Voting System Testing and Certification Program Manual

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice; Request for Substantive Comments.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing a procedural manual for its Pilot Voting System Testing and Certification Program Manual for a fifteen day public comment period. This program sets the administrative procedures for manufacturers seeking certification of pilot voting systems to be used in a federal election.

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Director, Voting System Certification, Washington, DC (202) 566–3100, Fax: (202) 566–1392.

SUPPLEMENTARY INFORMATION:

Background. HAVA requires that the EAC certify and decertify voting systems through testing conducted by accredited laboratories. Section 231(a)(1) of HAVA (42 U.S.C. 15371) specifically requires the EAC to "* * * provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories." To meet this obligation, the EAC has created a voluntary program to test pilot voting systems to a set of voluntary pilot certification requirements. The Pilot Testing Certification Program manual sets the procedures for the pilot voting system manufacturers to follow in order to receive certification for their system to be used in a pilot project for a state or local jurisdiction that require EAC certification.

The Pilot Voting System Testing and Certification program manual contains program requirements and procedures for the following areas:

1. Voting system manufacturer registration.
2. When voting system intended for use in a pilot must be submitted for certification.
3. Certification Testing, Technical Review and Grant of Certification for Pilot Voting Systems.
4. Denial of Certification.
5. Pilot Program Monitoring and Reporting.
6. Requests for Interpretations.
7. Release of Certification Program Information.

Substantive Comments: The EAC seeks substantive comments from the public on its proposed procedural manual. Please submit comments consistent with the information below. Comments should identify and cite the section of the manual at issue. Where a substantive issue is raised, please propose a recommended change or alternative policy. All comments submitted will be published at the end of the comment period on the EAC's Web site at *http://www.eac.gov*. This publication and request for comment is not required under the rulemaking, adjudicative, or licensing provisions of the Administrative Procedures Act (APA). It is a voluntary effort by the EAC to gather input from the public on the EAC's administrative procedures for certifying voting systems to be used in pilot projects. Furthermore, this request by the EAC for public comment is not intended to make any of the APA's rulemaking provisions applicable to development of this or future EAC procedural programs. However, in accordance with the Paperwork Reduction Act of 1995, a separate notice will be published on the **Federal Register** to request comments regarding the burden of responding to the information collection activities of the proposed manual; please refer to the EAC's Web site, *http://www.eac.gov*, for further information about the submission of comments regarding burden.

DATES: Submit written or electronic comments on this draft procedural manual on or before 5 p.m. EDT on April 26, 2010.

ADDRESSES: Submit comments via e-mail to *votingsystemguidelines@eac.gov;* via mail to Brian Hancock, Director of Voting System Certification, U.S. Election Assistance Commission, 1201 New York Avenue, Suite 300, Washington, DC 20005; or via fax to 202–566–1392. An electronic copy of the proposed guidance may be found on the EAC's Web site at *http://www.eac.gov.*

FOR FURTHER INFORMATION CONTACT: Matthew Masterson, Deputy Director, Testing and Certification Program 1201 New York Avenue, Suite 300, Washington, DC, (202) 566–3100, *Fax:* (202) 566–1392.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. 2010–8150 Filed 4–8–10; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13655–000]

Riverbank Minnesota, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 2, 2010.

On January 12, 2010, Riverbank Minnesota, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Granite Falls Pumped Storage Project No. 13655, to be located east of the City of Granite Falls and the Minnesota River in Chippewa County, Minnesota.

The proposed pumped storage project would consist of: (1) A new approximately 135-acre, 30-foot-deep upper reservoir constructed of enclosed earth embankments; (2) a new lower reservoir excavated in granite bedrock at a depth of approximately 1,800 feet below the surface, consisting of six approximately 150-foot-high, 90-foot-wide underground galleries; (3) a new approximately 20 to 100-foot-diameter intake structure; (4) a new approximately 1,800-foot-long, 20-foot-diameter penstock from the intake structure to an underground powerhouse; (5) a new approximately 380-foot-long, 83-foot-wide, and 400-foot-high underground powerhouse; (6) four new reversible pump-turbines with a total combined capacity of 1,000 megawatts; (7) a new 330-foot-long, 55-foot-wide, and 400-foot-high transformer gallery; (8) a new approximately 1.2-mile-long, 230-kilovolt transmission line; and (9) appurtenant facilities. The project

would have an estimated annual generation of 2,190 gigawatt-hours.

Applicant Contact: Douglas Spaulding, Nelson Energy, 8441 Wayzata Boulevard, Suite 101, Golden Valley, MN 55426, (952) 544–8133.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13655) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8065 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–110–000]

Tennessee Gas Pipeline Company; Notice of Application

April 2, 2010.

Take notice that on March 30, 2010, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place an inactive segment of an offshore supply lateral designated as Line No. 523M–2300, consisting of approximately 6.23 miles of 24-inch diameter pipeline and associated appurtenances located in federal waters offshore Louisiana. Tennessee states that the subject facilities have been out of service since W & T Offshore, Inc.'s platform was toppled by Hurricane Ike in September 2008, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3299, by facsimile at (713) 420–1605, or by e-mail at *tom.joyce@elpaso.com;* Susan T. Halbach, Senior Counsel, Legal, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–5751, by facsimile at (713) 420–1601, or by e-mail at *susan.halbach@elpaso.com;* or Debbie Kalisek, Analyst, Rates and Regulatory Affairs, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3292, by facsimile at (713) 420–1605, or by e-mail at *debbie.kalisek@elpaso.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8075 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13399–000]

New Jersey Water Supply Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 2, 2010.

On March 17, 2009, the New Jersey Water Supply Authority (New Jersey WSA) filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Spruce Run & Round Valley

Hydroelectric Project (Spruce Run/Round Valley Project). The Spruce Run/Round Valley Project would be located on tributaries of the South Branch Raritan River in the town of Clinton, Hunterdon County, New Jersey.

The Spruce Run development would consist of: (1) The existing 5,950-foot-long, 90-foot-high Spruce Run Dam with a 550-foot-long spillway; (2) the 1,290-acre Spruce Run reservoir with a normal pool elevation of 273 feet mean sea level (msl); (3) an existing outlet tower consisting of 450-foot-long twin 84-inch-diameter penstocks; (4) a new powerhouse with two turbine generating units with a total capacity of 75 kilowatts (kW); and (5) a new 20-foot-long, 34.5 kilovolt (kV) transmission line.

The Round Valley development would consist of: (1) The existing 1,460-foot-long, 135-foot-high North Dam; (2) the existing 1,400-foot-long, 180-foot-high South Dam; (3) an existing 2,340-foot-long, 75-foot-high dike; (4) the 2,350-acre Round Valley reservoir with a normal pool elevation of 385 feet msl; (5) a new powerhouse with a single turbine generating unit with a capacity of 1,128 kW; and (6) a new 20-foot-long, 34.5 kV transmission line.

The Round Valley Reservoir South Branch Hamden Pump Station development would use the 180-foot-high South Dam and would consist of: (1) A new powerhouse with two turbine generating units with a combined capacity of 420 kW; and (2) a new 80-foot-long, 34.5 kV transmission line. The project developments would produce an estimated average annual generation of about 628 megawatt-hours.

Applicant Contact: Edward Buss, P.E., New Jersey Water Supply Authority, 1851 State Hwy. 31, Clinton, NJ 08800, (908) 638–6121, ext. 261.

FERC Contact: Patrick Murphy, (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13399) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8073 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13623–000; Project No. 13375–000]

City of Raleigh; Community Hydro, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments and Motions To Intervene

March 29, 2010.

The City of Raleigh and Community Hydro, LLC filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Falls Lake Dam Hydroelectric Project located at the existing Falls Lake Dam and Reservoir on the Neuse River, Wake County, North Carolina, near the City of Raleigh, North Carolina. The projects would occupy federal lands under the jurisdiction of the U.S. Army Corps of Engineers. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Projects description:

The proposed Falls Lake Dam Hydroelectric Project by the City of Raleigh (Project No. 13623–000, filed on November 6, 2009), would have two alternatives. Alternative 1 would consist of: (1) An approximately 100-foot-long by 17.5-foot-diameter steel penstock extension of the existing tunnel; (2) an approximately 175-foot-long by 10-foot-diameter penstock, branching off the 17.5-foot-diameter penstock extension, which bifurcates into two 7-foot-diameter penstocks leading to the turbines; (3) a 70-foot-long by 50-foot-wide new powerhouse containing two turbine-generator units each with an installed capacity of 1,600 kW; (4) a 200-foot-long, 13.2 kV transmission line; and (5) appurtenant facilities. Alternative 1 would have an average annual generation of 8.7 gigawatt-hours. Alternative 2 entails installing two turbine-generators on the intake tower located at the upstream face of the dam. Each turbine-generator would have an installed capacity of 2,450 kW. Alternative 2 would have an average annual generation of 9.3 gigawatt-hours.

The proposed Falls Lake Dam Hydroelectric Project by Community Hydro, LLC (Project No. 13375–000, filed on February 20, 2009, entails installing six turbine-generators on the intake tower located at the upstream face of the dam. The project would have an installed capacity of 2,500 kW and an average annual generation of 8.3 gigawatt-hours.

Applicants Contact: For the City of Raleigh: Mr. Thomas A. McCormick, Raleigh City Attorney, P.O. Box 590, Raleigh, North Carolina 27601, e-mail *tom.mccormick@ci.raleigh.nc.us.* For Community Hydro, LLC: Lori Barg, Community Hydro, LLC, 113 Bartlett Rd., Plainfield, Vermont 05667, *telephone:* (802) 454–1874.

FERC Contact: Sergiu Serban, (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (http://www.ferc.gov/docs-filing/ferconline.asp) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13623–000, or 13375–000) in the

docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8060 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2558–029]

Vermont Marble Power Division of Omya Inc.; Notice of Application Tendered for Filing with the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

April 2, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2558–029.

c. *Date Filed:* March 31, 2010.

d. *Applicant:* Vermont Marble Power Division of Omya Inc.

e. *Name of Project:* Otter Creek Hydroelectric Project.

f. *Location:* The existing project is located on Otter Creek in Addison and Rutland Counties, Vermont. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Todd Allard, Operations Engineer, Vermont Marble Power Division of Omya Inc., 9987 Carver Road, Suite 300, Cincinnati, OH 45242, (513) 387–4344.

i. *FERC Contact:* Aaron Liberty, (202) 502–6862 or *aaron.liberty@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The existing Otter Creek Hydroelectric Project consists of three developments with a combined installed capacity of 18.1 megawatts (MW). The project produces an average annual generation of 67,258 megawatt-hours. Vermont Marble Power uses the energy from the Project to serve its retail customers in the towns of Proctor and Pittsford, Vermont and to serve its affiliated industrial operations within Omya Inc.

The Proctor development, located at river mile 64.2, includes the following constructed facilities: (1) A 13-foot-high, 128-foot-long, masonry, concrete-capped dam with a 3-foot-high inflatable flashboard system; (2) a 92-acre reservoir with a usable storage capacity of 275.48 acre-feet at a normal maximum water surface elevation of 469.5 feet; (3) a gated forebay-intake structure approximately 14 feet deep by 115 feet long with a maximum width of 48 feet; (4) two intakes with two penstocks: A 9-foot-in-diameter, 460-foot-long, riveted steel penstock that decreases to 8 feet in diameter; and a 7-foot-in-diameter, 500-foot-long, spiral welded steel penstock; (5) an original concrete and brick masonry powerhouse measuring 100 by 33 feet containing four vertical shaft turbines: Three 750 kW units and one 1,680 kW unit with a combined maximum hydraulic capacity of 565 cubic feet per second; (6) an additional steel structure measuring 28 by 48 feet attached to the original powerhouse containing one 3,000 kW vertical shaft unit with a maximum hydraulic capacity of 325 cfs; (7) generator leads; (8) a 0.48/4.16 kV single phase transformer; (9) a 0.48/46 kV step-up transformer; (10) three winding transformer banks; and (11) appurtenant facilities.

The Beldens development, located at river mile 23, includes the following constructed facilities: (1) Two concrete dams on either side of a ledge/bedrock island with 2.5-foot-high wooden flashboards: A 15-foot-high, 56-foot-long dam (west) and a 24-foot-high, 57-foot-long dam (east); (2) a 22-acre reservoir with a usable storage capacity of 252.52 acre-feet at a normal maximum water surface elevation of 283 feet; (3) two intakes equipped with trash racks: A 79-foot-long intake and a 35-foot-long intake with a 95-foot-long sluiceway; (4) a 12-foot-in-diameter, 30-foot-long steel penstock that bifurcates into two 10-foot-in-diameter sections, each leading to an original powerhouse; (5) a 12-foot-in-diameter, 45-foot-long concrete penstock that leads to a newer powerhouse; (6) an original concrete and masonry powerhouse measuring 40 by 44 feet containing a 800 kW vertical shaft unit and 949 kW vertical shaft unit with a combined maximum hydraulic capacity of 650 cfs; (7) a second, newer concrete powerhouse measuring 40 by 75 feet containing a 4,100 kW vertical shaft unit with a maximum hydraulic capacity of 1,350 cfs; (8) generator leads; (9) a 2.4/46 kV step-up transformer bank; and (10) appurtenant facilities.

The Huntington Falls development, located at river mile 21, includes the following constructed facilities: (1) A 31-foot-high, 187-foot-long concrete dam with a 2.5-foot-high inflatable flashboard system; (2) a 23-acre reservoir with a usable storage capacity of 234.16 acre-feet at a normal maximum water surface elevation of 218.1 feet; (3) two intakes equipped with trash racks: A 40-foot-long intake and a 24-foot-long intake; (4) three penstocks: Two 10-foot-in-diameter, 30-foot-long steel penstocks leading to an original powerhouse, and a 12-foot-in-diameter, 75-foot-long concrete penstock leading to a newer powerhouse; (5) an original brick masonry powerhouse measuring 42 by 60 feet containing a 600 kW vertical shaft unit and a 800 kW vertical shaft unit with a combined maximum hydraulic capacity of 660 cfs; (6) a second, newer powerhouse measuring 40 by 75 feet containing a 4,100 kW vertical shaft unity with a maximum hydraulic capacity of 1,350 cfs; (7) generator leads; (8) a 2.4/46 kV step-up transformer bank; and (9) appurtenant facilities.

Currently, the Proctor development operates in a modified run-of-river mode, with infrequent diversions at the direction of Independent System Operator-New England (ISO–NE), while the Beldens and Huntington Falls developments operate in a run-of-river mode. The Proctor development has a continuous downstream minimum flow requirement of 100 cfs or inflow to the development, whichever is less, with minimum flows from April through mid-June required to be equal to at least 50 percent of project inflows. A bypassed reach minimum flow requirement of 5 cfs is released at the Beldens development through an opening in the flashboards along the west dam. A bypassed reach minimum flow requirement of 15 cfs is released at the Huntington Falls development via a minimum flow gate at the right abutment of the dam.

Vermont Marble Power does not propose any changes to project facilities or operations. Vermont Marble Power proposes to implement measures to enhance recreation facilities in the project area.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/*

esubscription.asp to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Tendering Notice	April 2, 2010.
Notice of Acceptance/Notice of Ready for Environmental Analysis (when FERC approved studies are complete).	November 5, 2010.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	January 4, 2011.
Commission issues EA	May 4, 2011.
Comments on EA	June 3, 2011.
Modified Terms and Conditions	August 2, 2011.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8076 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13654–000]

Riverbank Minnesota, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 2, 2010.

On January 12, 2010, Riverbank Minnesota, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Chippewa County Pumped Storage Project No. 13654, to be located north of the City of Granite Falls and the Minnesota River in Chippewa County, Minnesota.

The proposed pumped storage project would consist of: (1) A new approximately 135-acre, 30-foot-deep upper reservoir constructed of enclosed earth embankments; (2) a new lower reservoir excavated in granite bedrock at a depth of approximately 1,800 feet below the surface, consisting of six approximately 150-foot-high, 90-foot-wide underground galleries; (3) a new approximately 20 to 100-foot-diameter intake structure; (4) a new approximately 1,800-foot-long, 20-foot-diameter penstock from the intake structure to an underground powerhouse; (5) a new approximately 380-foot-long, 83-foot-wide, and 400-foot-high underground powerhouse; (6) four new reversible pump-turbines with a total combined capacity of 1,000 megawatts; (7) a new 330-foot-long, 55-foot-wide, and 400-foot-high transformer gallery; (8) a new 200 to 1,000-foot-long, 230-kilovolt transmission line; and (9) appurtenant facilities. The project would have an estimated annual generation of 2,190 gigawatt-hours.

Applicant Contact: Douglas Spaulding, Nelson Energy, 8441 Wayzata Boulevard, Suite 101, Golden Valley, MN 55426, (952) 544–8133.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13654) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8074 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12626–002]

Northern Illinois Hydropower, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 2, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12626–002.

c. *Date filed:* March 31, 2009.

d. *Applicant:* Northern Illinois Hydropower, LLC.

e. *Name of Project:* Dresden Island Project.

f. *Location:* U.S. Army Corps of Engineers Dresden Island Dam on the Illinois River, in the Town of Morris, Grundy County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Damon Zdunich, Northern Illinois Hydropower, LLC, 801 Oakland Avenue, Joliet, IL 60435, (312) 320–1610.

i. *FERC Contact:* Dr. Nicholas Palso, (202) 502–8854 or *nicholas.palso@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY,

contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Project Description:* The Dresden Island Project would utilize the Corps of Engineer's existing Dresden Island Dam and reservoir and would consist of: (1) A new 75-foot by 125-foot concrete powerhouse between headgate sections 10 through 16 containing three generating units with a total installed capacity of 10.2 MW; (2) a 50-foot by 50-foot switchyard adjacent and to the north of the powerhouse building; (3) a new .08-mile-long transmission line; and (4) appurtenant facilities. The project would have an average annual generation of about 60,000 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, and prescriptions.

All filings must (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8072 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 1, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–57–000.

Applicants: Ameren Energy Generating Company.

Description: Application of Ameren Energy Generating Co. Pursuant to Section 203 of the Federal Power Act and Request for Expedited Consideration and Approval by June 1, 2010.

Filed Date: 04/01/2010.

Accession Number: 20100401–5121.

Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–969–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy Inc submits an executed Cost-Based Agreement for Wholesale Power Sales Service.

Filed Date: 03/31/2010.

Accession Number: 20100331–0242.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–977–000.

Applicants: Tilton Energy LLC.

Description: Tilton Energy LLC submits the Black Start Service Agreement with Illinois Power Company.

Filed Date: 03/31/2010.

Accession Number: 20100401–0233.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–978–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Wolverine Power Supply Cooperative, Inc submits Original Sheet 1 to FERC Electric Tariff, Original Volume 3 and supporting cost data, effective April 1, 2010.

Filed Date: 03/31/2010.

Accession Number: 20100401–0234.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–979–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Service Agreement for the Resale, Reassignment to Transfer of Point-to-Point Transmission Service with Kansas City Power & Light Co.

Filed Date: 03/31/2010.

Accession Number: 20100401–0235.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–980–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

Filed Date: 03/31/2010.
Accession Number: 20100401–0236.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–981–000.
Applicants: Montana Alberta Tie Ltd.
Description: Montana Alberta Tie Ltd *et al* submits revisions to the MATL LLP FERC Electric Tariff, Second Revised Volume 2, to be effective April 1, 2010.
Filed Date: 03/31/2010.
Accession Number: 20100401–0237.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–982–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc submits proposed amendments to its Open Access Transmission Tariff and Market Administration and Control Area Services Tariff *etc.*
Filed Date: 03/31/2010.
Accession Number: 20100401–0243.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–983–000.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits the Amended Network Integration Transmission Service Agreement No 325 with the City of North Little Rock, Arkansas *etc.*
Filed Date: 03/31/2010.
Accession Number: 20100401–0241.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–984–000.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits amendments to their Open Access Transmission Tariff to amend Attachment H and Schedule 7 of their OATT.
Filed Date: 03/31/2010.
Accession Number: 20100401–0238.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–985–000.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits the Dynamic Transfer Operating Agreements, Service Agreement No 564, 565, 566, 567 and 585 under FERC Electric Tariff, Third Revised Volume No 3 with ESI, Oxy and Benton *et al.*
Filed Date: 03/31/2010.
Accession Number: 20100401–0239.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–986–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc submits the 41st Amendment to the Power Coordination, Interchange and Transmission Service Agreement with Arkansas Electric Cooperative Corp, First Revised Rate Schedule 82.
Filed Date: 03/31/2010.
Accession Number: 20100401–0240.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–987–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services Inc submits Notices of Termination of First Revised Service Agreement No. 466,509 *et al.* pursuant to the filing requirements set forth in Order No. 614.
Filed Date: 03/31/2010.
Accession Number: 20100401–0242.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–988–000.
Applicants: Central Maine Power Company.
Description: Central Maine Power Company submits Engineering and Procurement Agreement dated 1/20/09 with Record Hill Wind, LLC designated as Original Service Agreement *etc.*
Filed Date: 03/26/2010.
Accession Number: 20100326–0211.
Comment Date: 5 p.m. Eastern Time on Friday, April 16, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–100–003.
Applicants: Duke Energy Carolinas, LLC.
Description: 2009 Penalty Distribution Report of Duke Energy Carolinas, LLC.
Filed Date: 04/01/2010.
Accession Number: 20100401–5106.
Comment Date: 5 p.m. Eastern Time on Thursday, April 22, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–8089 Filed 4–8–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 2, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–374–001.
Applicants: Medicine Bow Power Partners, LLC.
Description: Withdrawal of Request for Waiver of Medicine Bow Power Partners, LLC.
Filed Date: 03/26/2010.
Accession Number: 20100326–5082.
Comment Date: 5 p.m. Eastern Time on Friday, April 16, 2010.

Docket Numbers: ER10–971–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Cooperative, Inc submits Amendment to First Revised Rate Schedule No. 23 *et al.*
Filed Date: 03/31/2010.
Accession Number: 20100401–0209.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–972–000.

Applicants: New England Power Pool.
Description: New England Power Pool submits NEPOOL Member. Applications and Termination of NEPOOL Memberships.
Filed Date: 03/31/2010.
Accession Number: 20100401–0210.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–973–000.
Applicants: Delmarva Power & Light Company.
Description: Delmarva Power & Light Co submits an executed construction agreement.
Filed Date: 03/31/2010.
Accession Number: 20100401–0211.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–974–000.
Applicants: Big Horn II Wind Project LLC.
Description: Big Horn II Wind Project LLC submits a request for blanket authorization to make wholesale sales etc.
Filed Date: 03/31/2010.
Accession Number: 20100401–0212.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–975–000.
Applicants: Juniper Canyon Wind Power LLC.
Description: Juniper Canyon Wind Power LLC submits FERC Electric Taiff, Original Volume No. 1.
Filed Date: 03/31/2010.
Accession Number: 20100401–0213.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Docket Numbers: ER10–976–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Co submits an executed Engineering & Procurement Agreement.
Filed Date: 03/31/2010.
Accession Number: 20100401–0214.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Take notice that the Commission received the following open access transmission tariff filings:
Docket Numbers: OA07–32–010.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc submits a compliance/refund report relating to penalty assessments and distributions pursuant to Order 890.
Filed Date: 03/31/2010.
Accession Number: 20100401–0232.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 21, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–8088 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–3–000; CP10–3–001]

Questar Overthrust Pipeline Company; Amended Notice of Intent To Prepare an Environmental Assessment for the Proposed Mainline 133 Loop Expansion Project and Request for Comments on Environmental Issues

March 30, 2010.

As previously noticed on April 10, 2009, and amended herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Mainline 133 Loop Expansion Project (Loop Expansion Project), involving construction and operation of facilities by Questar Overthrust Pipeline Company (Overthrust) in Uinta and Sweetwater Counties, Wyoming. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of a second scoping period (due to pipeline route changes in the project design) the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on April 29, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project, as well as newly-affected landowners along the revised pipeline routes. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need

To Know?" was attached to the project notice Overthrust provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Overthrust proposes to construct the following facilities:

- About 43 miles of 36-inch-diameter pipeline in Uinta and Sweetwater Counties, Wyoming;
- A bypass valve assembly tie-in at the Rock Springs Compressor Station in Rock Springs, Wyoming;
- A new crossover valve assembly at about milepost (MP) 43.3; and
- Two 36-inch-diameter block valves at about MPs 18.6 and 38.5.

The Loop Expansion Project would allow Overthrust to provide up to 800,000 dekatherms per day of natural gas westbound to Kern River Gas Transmission Company and to El Paso Corporation's proposed Ruby Pipeline.

Since issuance of our [1] April 10, 2009 notice, Overthrust has changed its proposed 43-mile-long pipeline route in two locations to address concerns by General Chemical (Soda Ash) Partners (General Chemical) and FMC Corporation (FMC) regarding impacts on active mining operations in the project area. Overthrust revised its route from MP 19.7 to 26 and MP 30.2 to 38.4 to avoid and/or mitigate impacts in the General Chemical and FMC mining areas, respectively. These revised sections are similar in length and are within proximity to the originally-proposed sections of the pipeline route.

The general location of the originally-proposed route and the revised sections are shown in the appendix.[2]

Land Requirements for Construction

Construction of Overthrust's proposed facilities would disturb about 833 acres of land including aboveground facilities and the pipeline. Overthrust would use existing public roads to access the work areas. Following construction, about 262.3 acres would be maintained for permanent operation of the project's facilities while the remaining acreage would be restored and allowed to revert to former uses. About 90 percent (39.1 miles) of the pipeline would be collocated with existing pipeline, utility, or road rights-of-ways.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and will be published and distributed to the public. A comment period will be allotted for public review when the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the Department of the Interior's Bureau of Land Management has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for the section 106 process, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.[3] We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the revised facilities and the environmental information provided by Overthrust. This preliminary list of issues may be changed based on your comments and our analysis:

- Geologic concerns in the active mining areas, and
- Cultural resources.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before April 29, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

[1] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[2] The appendix referenced in this notice is not being printed in the **Federal Register.** Copies of the appendix were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to page 6 of this notice.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the *Documents and Filings* link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called *Sign up* or *eRegister.* You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes General Chemical and FMC; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. When the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP10–3). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, any public meetings or site visits related to this project will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8057 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–78–000]

CenterPoint Energy Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line L Abandonment Project and Request for Comments on Environmental Issues

April 2, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line L Abandonment Project involving abandonment of facilities by CenterPoint Energy Gas Transmission Company (CenterPoint) in Hot Spring, Clark, Nevada and Columbia Counties, Arkansas. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on May 3, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice CenterPoint provided to landowners. This fact sheet addresses a number of typically-asked questions, including how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

According to CenterPoint, Line L has been inactive for over three years, is deteriorated and obsolete, does not meet the requirements of new pipeline safety regulations, and is no longer needed to provide service to its customers. Therefore, CenterPoint proposes to abandon approximately 90.7 miles of predominantly 18″ diameter pipeline (including some 10″ and 20″ diameter segments) through Hot Spring, Clark, Nevada and Columbia counties in southern Arkansas. The proposed abandoned pipeline is known as "Line L". Approximately 0.8 mile of non-collocated segments along Line L would be abandoned by removal. Various other above-ground facilities associated with Line L would be removed. Line L would be cut and capped at each end to isolate it from the rest of CenterPoint's system. The remaining portions of Line L (approximately 89.9 miles) would be abandoned in-place and are located within or adjacent to easements associated with other active CenterPoint owned and operated pipelines. Following pipeline abandonment activities, CenterPoint would retain

rights to the permanent easement associated with Line L along the full length of the existing pipeline.

The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

The removal of approximately 0.8 mile of Line L and above-ground facilities would be conducted at numerous points along the pipeline and would require a total of about 15.2 acres of temporary workspace. Property restoration would be conducted in accordance with any agreements between CenterPoint and the landowner, or as requested by the landowner and consistent with CenterPoint's restoration and maintenance standards. CenterPoint would preserve mature trees to the extent possible, and lawns and landscaping within the affected workspace areas would be restored following removal of the pipeline segments.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise; and
- Endangered and threatened species.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.[3] We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC, on or before May 3, 2010.

For your convenience, there are three methods which you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the *Documents and Filings* link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called *Sign up* or *eRegister.* You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) whose property may be used temporarily for project purposes, or who own land within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP10–78). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8066 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–12–005]

Enterprise Texas Pipeline LLC; Notice of Compliance Filing

April 1, 2010.

Take notice that on March 30, 2010, Enterprise Texas Pipeline LLC (Enterprise Texas), filed its Statement of Operating Conditions in compliance with the March 2, 2010 Letter Order (March 2 Order) and pursuant to section 284.123(e) of the Commission's regulations. Enterprise Texas states that the revisions include modifications consistent with the March 2 Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Thursday, April 8, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8063 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–447–004]

Monroe Gas Storage Company, LLC; Notice of Compliance Filing

April 1, 2010.

Take notice that on March 23, 2010, Monroe Gas Storage Company, LLC (Monroe), submitted a compliance filing to comply with the February 18, 2010 Commission Order on Tariff Sheets, Non-Conforming Service Agreements, and Compliance Filing. (130 FERC 61,113 (2010)).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before 5 p.m. Eastern time on the comment date indicated below. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Tuesday, April 6, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8062 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–911–001]

Wisconsin Electric Power Company; Notice of Filing

April 2, 2010.

Take notice that on March 26, 2010, Wisconsin Electric Power Company filed counterpart signature pages to the executed Wholesale Distribution Service Agreement filed on March 19, 2010 with WPPI Energy.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 16, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8068 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–974–000]

Big Horn II Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 2, 2010.

This is a supplemental notice in the above-referenced proceeding of Big Horn II Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8070 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–975–000]

Juniper Canyon Wind Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 2, 2010.

This is a supplemental notice in the above-referenced proceeding of Juniper Canyon Wind Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an

eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8071 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–956–000]

Vantage Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 2, 2010.

This is a supplemental notice in the above-referenced proceeding of Vantage Wind Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 19, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8069 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Indo-U.S. Regulatory Workshop

April 1, 2010.

Commissioner Philip D. Moeller will convene a workshop at the Federal Energy Regulatory Commission (FERC) on Thursday, April 29, 2010, from 9 a.m. to 4 p.m., in the Commission Meeting Room at the Commission's Washington, DC headquarters, 888 First Street, NE. This workshop will provide a forum for U.S. and Indian public utility regulators to exchange information of mutual interest and to discuss regulatory challenges faced by commissioners from both nations. The FERC Commissioners, along with other invited participants, including U.S. state commissioners, the Central Electricity Regulatory Commission of India, and India's state regulatory commissions are expected to be in attendance.

This workshop is open to the public and all interested parties are invited to attend. There is no registration fee to attend and the workshop will not be webcast or transcribed.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Questions about the workshop may be directed to Jason Stanek, Policy Advisor, Office of Commissioner Philip Moeller, by e-mail at *jason.stanek@ferc.gov* or by telephone at (202) 502–8403.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8061 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–51–000]

Grassland Renewables Energy LLC; Notice of Petition for Declaratory Order

March 30, 2010.

Take notice that on March 29, 2010, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, Grassland Renewables Energy LLC filed an application for Petition for Declaratory Order, requesting the Commission to rule on whether the Petitioner's proposal to construct the Wind Spirit Project Collector System (WSP Collector System) as a participant funded transmission facility with priority transmission service rights assigned to WSP Poolco and other entities that agree to pay for the entire cost of the WSP Collector System by contracting for such service at cost-based rates in advance of construction, satisfies the Commission' open access transmission requirements, as the Commission ruled on a participant funded transmission facilities in Orders, *Northeast Utilities Service Co. and NSTAR Electric Co.,* 127 FERC ¶ 61,179 (May 22, Order), and *reh'g denied,* 129 FERC ¶ 61,279 (December 29, Order) (2009).

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 28, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8058 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–54–000]

Desert Southwest Power, LLC; Notice of Petition for Declaratory Order

April 2, 2010.

Take notice that on March 30, 2010, pursuant to Rule 207(a)(2), 18 CFR 385.207(a)(2) (2009), of the Rules of Practice and Procedure of the Federal Regulatory Commission, Desert Southwest Power, LLC filed an application for declaratory order requesting the Commission to authorize certain transmission rate incentives for the Desert Southwest Transmission Project, which satisfy requirements of section 219 of the Federal Power Act, as amended, 16 U.S.C. 824s (2006), and Order No. 679, *Promoting Transmission Investment Through Pricing Reform,* Order No. 679, 71 FR 43294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g,* Order No. 679–A, 72 FR 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g,* 119 FERC ¶ 61, 062 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 29, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8067 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2144–038; Project No. 2225–013]

City of Seattle; Public Utility District No. 1 of Pend Oreille County; Notice of Settlement Agreement and Soliciting Comments

April 1, 2010.

Take notice that the following Joint Settlement Agreement (Settlement) has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Joint Settlement Agreement for the relicensing of the Boundary Hydroelectric Project and the surrender of the Sullivan Creek Hydroelectric Project.

b. *Project No.:* Boundary: P–2144–038; Sullivan Creek: P–2225–013.

c. *Date Filed:* March 29, 2010.

d. *Applicant:* Boundary: City of Seattle; Sullivan Creek: Public Utility District No. 1 of Pend Oreille County.

e. *Location:* Boundary: The existing project is located on the Pend Oreille River in Pend Oreille County, Washington, in northeast Washington. The project occupies 616 acres of the Colville National Forest and 313 acres of Bureau of Land Management lands.

Sullivan Creek: The existing project is located on Sullivan Creek, a tributary to the Pend Oreille River. The project also occupies lands within the Colville National Forest.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Boundary: Jorge Carrasco, Superintendent, Seattle City Light, 700 Fifth Avenue, Suite 3200, Seattle, WA 98124–4023; (206) 615–1091.

Sullivan Creek: Mark J Cauchy, Public Utility District No. 1 of Pend Oreille County, Washington, PO Box 190, Newport, WA 99156–0190; 509–447–9331.

i. *FERC Contact:* David Turner (202) 502–6091 or via e-mail at *david.turner@ferc.gov.*

j. *Deadline for filing comments on the Settlement:* April 19, 2010. Reply comments due April 28, 2010. All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. The City of Seattle (City) and the Public Utility District of Pend Oreille County (District) filed a comprehensive

settlement agreement (Agreement) on behalf of the City; District; Bureau of Indian Affairs; National Park Service; U.S. Fish and Wildlife Service; United States Forest Service; Washington Department of Fish and Wildlife; Washington Department of Ecology; Kalispel Tribe; the Lands Council; American Whitewater; Selkirk Conservation Alliance; the Town of Cusick, Washington; Rick Larson; and Al Six. The Agreement resolves among the signatories all issues associated with issuance of a new license for the Boundary Project, including fish passage, fish and wildlife habitat enhancement, water quality, fish supplementation, recreation, cultural properties, and other matters. The surrender of the District's Sullivan Creek Project includes the removal of Mill Pond dam, related stream habitat restoration, and construction of a cold water release facility at Sullivan Lake dam. The signatories request that the Commission: (1) Accept and incorporate, without material modification, all of the proposed license articles in Exhibit 1 of the Settlement in the new project license for the Boundary Project; and (2) insure an order accepting the surrender of the District's license for the Sullivan Creek project subject to the conditions contained in Appendix B to the Agreement.

l. The A copy of the Settlement Agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "e-Library" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–8064 Filed 4–8–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8989–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements
Filed 03/29/2010 Through 04/02/2010
Pursuant to 40 CFR 1506.9.

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100108, Draft EIS, BLM, AZ, Sonoran Solar Energy Project, Construction and Operation of a 3756-megawatt (MW) Concentrated Solar Thermal Power Plant and Ancillary Facilities on 3,702 Acres, Right-of-Way Granting, Maricopa County, AZ, *Comment Period Ends:* 05/24/2010, *Contact:* Joe Incardine 801–524–3833.

EIS No. 20100109, Draft Supplement, BR, UT, Narrows Project, Updated Information, To Develop a Supplemental Water Supply for Agricultural and Municipal and Industrial Water Use, Gooseberry Creek, Sanpete County, UT, *Comment Period Ends:* 05/24/2010, *Contact:* Kerry Schwartz 801–379–1150.

EIS No. 20100110, Final EIS, BR, CA, Los Vaqueros Reservoir Expansion Project, To Develop Water Supplies Environmental Water Management that Supports Fish Protection, Habitat Management, and other Environmental Water Needs in the Delta and Tributary River Systems, San Francisco Bay Area, Contra Costa County, CA, *Wait Period Ends:* 05/10/2010, *Contact:* Louis Moore 916–978–5106.

EIS No. 20100111, Draft EIS, BLM, CA, Ridgecrest Solar Power Project, Construction and Operation of a Concentrated Solar Powered Electric Generating Facility, Application for a Right-of-Way Grant, California Desert Conservation Area Plan Amendment, Kern County, CA, *Comment Period Ends:* 07/08/2010, *Contact:* Janet Eubanks 951–697–5376.

EIS No. 20100112, Final EIS, USFWS, CA, Paiute Cutthroat Trout Restoration Project, Eradication of Non-Native Trout Species from 11 Stream Miles of Silver King Creek, Alpine County, CA, *Wait Period Ends:* 05/10/2010, *Contact:* John Robles 916–414–6464.

EIS No. 20100113, Final EIS, FHWA, ID, US–95 Garwood to Sagle (from MP–438.4 to MP–469.75) Transportation Improvements to Present and Future Traffic Demand, Funding, NPDES Permit and U.S. Army COE Section 404 Permit, Kootenai and Bonner Counties, ID, *Wait Period Ends:* 05/10/2010, *Contact:* Ross Blanchard 208–334–9180.

EIS No. 20100114, Draft EIS, USFS, SD, Mystic Range Project Area, Propose to Reauthorize Grazing of Domestic Livestock on Eight Allotments, Black Hills National Forest, Pennington and Custer Counties, SD, *Comment Period Ends:* 05/24/2010, *Contact:* Katie Van Alstyne 606–343–1567.

EIS No. 20100115, Draft EIS, BLM, CA, Genesis Solar Energy Project, Application for a Right-of-Way Grant to Construct, Operate and Decommission a Solar Thermal Facility on Public Lands, California Desert Conservation Area Plan, Riverside County, CA, *Comment Period Ends:* 07/08/2010, *Contact:* Allison Shaffer 760–833–7104.

EIS No. 20100116, Draft EIS, FHWA, NC, Mid-Currituck Bridge Study, Proposed Transportation Improvements, Currituck and Dare Counties, NC, *Comment Period Ends:* 06/07/2010, *Contact:* John F. Sullivan 919–856–4346.

EIS No. 20100117, Draft EIS, USFS, WV, Fernow Experimental Forest Project, To Continue Long-Term Research Studies Involving Removal of Trees, Prescribed Burning, Fertilization, and Use of Herbicides and other Management Activities to Control Invasive Plant Species, Tucker County, WV, *Comment Period Ends:* 05/25/2010, *Contact:* Mary Beth Adams 304–478–2000 Ext 130.

EIS No. 20100118, Draft EIS, USACE, KY, East Kentucky Power Cooperative, Proposed Baseload Power Plant, to Constructing and Operating a 278 Megawatt Circulating

Fluidized Bed Electric Generating Unit (CFD), and Associated Infrastructure at the Existing J.K. Smith Power Station, Application for U.S. Army COE Section 10 and 404 Permits, Clark County, KY, *Comment Period Ends:* 05/24/2010, *Contact:* Michael Hasty 502–315–6676.

The U.S. Department of Army, Corps of Engineers has adopted the U.S. Department of Energy's FEIS #20020508 filed 12/06/2002. The Corps of Engineers was not a Cooperating Agency on the above FEIS. Under Section 1506.3(b) of the CEQ Regulations the Adopting Agency shall treat the statement as a draft and Recirculate it.

EIS No. 20100119, Final EIS, NPS, ND, Theodore Roosevelt National Park, Elk Management Plan, Implementation, Billing and McKenzie Counties, ND, *Wait Period Ends:* 05/10/2010, *Contact:* Valerie Naylor 701–623–4466.

EIS No. 20100120, Final EIS, USFS, CO, Rio de los Pinos Vegetation Management Project, Proposes to Salvage Engelmann Spruce Trees that have been killed by, or are Infested with, Spruce Beetle, Conejos Peak Ranger District, Rio Grande National Forest, Conejos, Rio Grande and Archuleta Counties, CO, *Wait Period Ends:* 05/10/2010, *Contact:* Kevin Duda 719–274–8971.

Dated: April 6, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–8129 Filed 4–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9135–8]

Total Coliform Rule Revisions—Notice of Stakeholder Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is developing proposed revisions to the 1989 Total Coliform Rule (TCR). The Total Coliform Rule/Distribution System Advisory Committee established an Agreement in Principle, which provides the Agency with recommendations for revising the TCR. One of the recommendations of the Committee is that EPA conduct stakeholder outreach as the Agency develops the proposed revisions. Today, EPA is giving notice of a public meeting in which the Agency will provide updates on the proposed Revised Total Coliform Rule (RTCR) and the Distribution Systems Research and Information Collection Partnership; opportunities for stakeholders to provide feedback on assessment and corrective action guidance related to the proposed rule; and opportunities for stakeholders to provide feedback on options for the process of reviewing the methods approved to analyze drinking water samples to determine the presence of total coliforms and *E. coli.* Other topics to be discussed in the meeting include a review of EPA's commitments to stakeholder outreach and involvement pertaining to the proposed RTCR and the plan and tentative schedule for revising other guidance documents.

DATES: The public meeting will be held on Tuesday, May 11, 2010 (9:30 a.m. to 5 p.m., Eastern Daylight Savings Time (EDST)) and Wednesday, May 12, 2010 (8:30 a.m. to 12:30 p.m., EDST). Attendees and those planning to participate via teleconference should register for the meeting by calling Kate Zimmer of RESOLVE at (202) 965–6387or by e-mail to *kzimmer@resolv.org* no later than May 4, 2010.

ADDRESSES: The meeting will be held at the EPA East Building, 1201 Constitution Avenue, NW., Washington, DC 20460. On May 11, 2010, the meeting will be in room 1117(A) of the East Building. On May 12, 2010, the meeting will be in room 1153 of the East Building.

FOR FURTHER INFORMATION CONTACT: Teleconferencing will be available for individuals unable to attend the meeting in person. For general inquiries about this meeting and teleconference information, contact Kate Zimmer of RESOLVE at (202) 965–6387 or by e-mail *kzimmer@resolv.org.* For technical information, contact Sean Conley (*conley.sean@epa.gov,* (202) 564–1781, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; fax number: (202) 564–3767). For more information on the Committee's recommendations please visit, *http://www.epa.gov/safewater/sdwa/regs_under_development.html.*

SUPPLEMENTARY INFORMATION: *Special Accommodations:* For information on access or accommodations for individuals with disabilities, please contact Cesar Cordero at (202) 564–5275 or by e-mail at *cordero.cesar@epa.gov.* Please allow at least 10 days prior to the meeting to give EPA time to process your request.

Dated: April 5, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–8126 Filed 4–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0645; FRL–9135–9]

Notice of Peer Review Meeting for the External Peer Review Drafts of Two Documents on Using Probabilistic Methods To Enhance the Role of Risk Analysis in Decision-Making

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Peer Review Meeting with Opportunity for Public Comment.

SUMMARY: EPA is announcing that Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer review meeting to review two draft documents entitled, "Using Probabilistic Methods to Enhance the Role of Risk Analysis in Decision-Making, with Case Study Examples" and a "Managers' Summary" of the same document. The draft documents were prepared by the Agency's Risk Assessment Forum. The peer review meeting is scheduled to take place on May 6, 2010. On August 18, 2009, EPA announced a 15-day public comment period for the draft documents (74 FR 41695), and on September 17, 2009 extended the comment period to 60 days (74 FR 47794), thus closing the public comment period on October 16, 2009.

The public comment period and the external peer review are separate processes that provide opportunities for all interested parties to comment on the document. In addition to the opportunity provided for public comments through the EPA docket by the closing date of October 16, 2009, the public can provide comments for the external peer reviewers' consideration through the public meeting scheduled for May 6, 2010.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

The public will be given an opportunity to observe and provide oral comments at this meeting by registering with the point of contact below (*see* HOW CAN I REQUEST TO PARTICIPATE IN THIS MEETING?). The draft document is available through the EPA docket at *http://www.regulations.gov* under Docket ID No. EPA–HQ–ORD–2009–0645. Additionally, the draft document and the charge questions for EPA's external peer review are available via the Internet on the Risk Assessment Forum's home page at *http://www.epa.gov/raf/prawhitepaper.*

In preparing a final report, EPA will consider the peer review report of the recommendations from the external peer review panel and any public comments that EPA receives in accordance with the **Federal Register** notices noted above on the document and at the public meeting.

DATES: The peer review meeting will be held on May 6, 2010 at 8:30 a.m., and will end approximately 4 p.m. Eastern Daylight Time. Registration for this peer review meeting is required (*see* HOW CAN I REQUEST TO PARTICIPATE IN THIS MEETING?). Members of the public will be allowed to make brief (no longer than 5 minutes) oral statements during the meeting's public comment period.

How Can I Request To Participate in This Meeting?

Members of the public may call into the meeting via teleconference as observers, and there will be a limited time for comments from the public. The peer-review meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

Space is limited, and reservations will be accepted on a first-come, first-served basis. A teleconference line will be available to registered observers if traveling is not an option. In order to participate, you should contact the EPA contractor, ERG, which is organizing, convening, and conducting the peer review meeting. To attend the meeting, register by April 29, 2010, by calling ERG at (781) 674–7374 or toll free at (800) 803–2833 (ask for the PRA peer review coordinator, Laurie Waite), sending a facsimile to (781) 674–2906 (please reference: "PRA Peer Review Meeting" and include your name, title, affiliation, full address and contact information), or sending an e-mail to *meetings@erg.com* (subject line: PRA Peer Review Meeting and include your name, title, affiliation, full address and contact information). You may also register via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-pra.htm*. When registering, please also indicate whether you would like to make a comment during the observer comment portion of the meeting. The call-in number for the peer review meeting will be: Telephone number: 1 (888) 346–3659; Pass Code: 87633#.

ADDRESSES: The drafts "Using Probabilistic Methods to Enhance the Role of Risk Analysis in Decision-Making, with Case Study Examples" and "Using Probabilistic Methods to Enhance the Role of Risk Analysis in Decision-Making-Managers' Summary" are available primarily via the Internet on the Risk Assessment Forum's home page at *http://www.epa.gov/raf/prawhitepaper.* A limited number of paper copies are available from the Risk Assessment Forum. If you are requesting a paper copy, please provide your name, mailing address, and the document title, to Dr. Kathryn Gallagher via the contact information below.

For technical information, please contact: Dr. Kathryn Gallagher, Executive Director of the Risk Assessment Forum, Mail Code 8105R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–1398; *fax number:* (202) 564–2070, *E-mail*: *gallagher.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION: Various stakeholders, inside and outside the Agency, have called for a more comprehensive characterization of risks, including uncertainties, in protecting more sensitive or vulnerable populations and life stages. Therefore, the Office of the Science Advisor of the EPA, together with EPA's Science Policy Council and members of EPA's Risk Assessment Forum (RAF), identified a need to examine the use of probabilistic approaches in Agency risk assessment and risk management. An RAF Technical Panel developed this White Paper and the Managers' Summary to provide a general overview of the value of probabilistic analyses and similar or related methods, and some examples of current applications across the Agency. The purpose of these papers is not only to describe potential and actual uses of these tools in the risk decision process, but also to encourage their further implementation in human, ecological, and environmental risk analysis and related decision making. The enhanced use of probabilistic analyses to characterize uncertainty in assessments would not only reflect external scientific advice on how to further advance EPA risk assessment science, but will also help to address specific challenges faced by managers and improve confidence in Agency decisions. The draft document was prepared by the Probabilistic Risk Analysis Technical Panel of EPA's Risk Assessment Forum and has undergone internal peer review at EPA.

Dated: April 5, 2010.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2010–8127 Filed 4–8–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 30, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (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, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 8, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, 202–418–0214, Judith–B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1062.

Title: Schools and Libraries Universal Service Support (E–Rate) Program, Notification of Equipment Transfers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions and state, local or tribal government.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i), 154(j), 201–205, 214, 254 and 403.

Total Annual Burden: 20 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The FCC does not require that respondents submit confidential information to the Commission. If the Commission does request applicants to submit information that they believe is confidential, respondents may do so under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period in order to obtain the full three year clearance from them. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. The Commission is reporting a 80 hour reduction in the total annual burden. This adjustment is due to fewer respondents since this was last approved by OMB based on updated information received from the Universal Service Administrative Company (USAC), the administrator of the E–rate program.

The purpose of the required notification is to prevent waste, fraud and abuse in the transfer of services and equipment acquired under the E–rate program. Once an eligible school or library has purchased service or equipment using an E–rate discount, section 254 of the Communications Act of 1934 (the Act), as amended, prohibits that school or library from reselling or otherwise transferring the purchased service, or any equipment components of such a service, in consideration for money or any other thing of value. In the Schools and Libraries Third Report and Order (CC Docket No. 02–6, FCC Rcd 26912), the Commission further prohibited schools and libraries from transferring the equipment components of eligible services to other schools within three years of their purchase, even without receiving money or other consideration in return, with one exception. If the schools or library that ordered the eligible services or equipment permanently or temporarily closes, then that school or library can transfer any services and equipment components of those services to another school or library, so long as the school or library notifies USAC of the transfer. Additionally, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years. See 47 CFR 54.513.

The requirements contained in this information collection are necessary to implement the Act regarding the transfer of services and equipment under the E–rate program and to promote the goal of preventing waste, fraud, and abuse. Further, this information collection enables USAC to verify compliance with the equipment transfer prohibition as part of its beneficiary audit review.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–8100 Filed 4–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting Notice

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, April 13, 2010, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Amendments to Guidelines for Appeals of Material Supervisory Determinations and to the Guidelines for Appeals of Deposit Insurance Assessment Determinations.

Discussion Agenda

Memorandum and resolution re: Interim Rule with Request for Comment: Temporary Liquidity Guarantee Program.

Memorandum and resolution re: Notice of Proposed Rulemaking on Assessments.

Memorandum and resolution re: Notice of Proposed Rulemaking—Large Insured Depository Institutions Reporting and Planning.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: April 6, 2010

Valerie J. Best,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2010–8217 Filed 4–7–10; 11:15 am]

BILLING CODE P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standard 37, Social Insurance: Additional Requirements for Management's Discussion and Analysis and Basic Financial Statements

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

BOARD ACTION: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standard 37, Social Insurance: Additional Requirements for Management's Discussion and Analysis and Basic Financial Statements.

The standard is available on the FASAB home page *http://www.fasab.gov/standards.html.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: April 6, 2010.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2010–8138 Filed 4–8–10; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Michelle Shore, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Implementation of the Following Report

Report title: Census of Finance Companies.

Agency form number: FR 3033p.

OMB control number: 7100–0277.

Frequency: One-time.

Reporters: Domestic finance companies and mortgage companies.

Estimated annual reporting hours: 6,000 hours.

Estimated average hours per response: 0.33 hours.

Number of respondents: 18,000.

General description of report: This information collection is authorized by law (12 U.S.C. 225a, 263, and 353–359) and is voluntary. Individual responses are exempt from disclosure pursuant to section (b)(4) of the Freedom of Information Act (5 U.S.C. 552).

Abstract: The FR 3033 information collection includes the Census of Finance Companies (FR 3033p) and the Quinquennial Finance Company Survey (FR 3033s). The survey will be reviewed in a separate proposal in 2010.

Since June 1955, the Federal Reserve System has surveyed the assets and liabilities of finance companies at five-year intervals. The census would ask a set of questions designed to identify the universe of finance companies eligible for potential inclusion in the survey and to enable the stratification of the sample for more statistically efficient estimation. The census would gather limited information including total assets, areas of specialization, and information on the corporate structure of the companies.

For purposes of this information collection, finance companies were defined as domestic companies (excluding commercial banks, cooperative banks, investment banks, savings banks, savings and loan institutions and industrial loan corporations or their subsidiaries) whose largest portion of assets is made up of consumer or business loans or leases.

Current actions: On January 29, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 4819) requesting public comment for 60 days on the implementation of the FR 3033p. The comment period for this notice expired on March 30, 2010. The Federal Reserve did not receive any comments. The report will be implemented as proposed.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Report

Report title: Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB control number: 7100–0286.

Frequency: Semiannually.

Reporters: U.S. dealers of over-the-counter derivatives.

Annual reporting hours: 2,100 hours.

Estimated average hours per response: 210 hours.

Number of respondents: 5.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a), 348(a), 263, and 353–359) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This voluntary report collects derivatives market statistics from the five largest U.S. dealers of over-the-counter (OTC) derivatives. Data are collected on the notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, and equity- and commodity-linked OTC derivatives contracts across a range of underlying currencies, interest rates, and equity markets.

This collection of information complements the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. The Federal Reserve conducts both surveys in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements (BIS), which publishes global market statistics that are aggregations of national data.

Current Actions: On January 29, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 4819) requesting public comment for 60 days on the extension, with revision, of the FR 2436. The comment period for this

notice expired on March 30, 2010. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Notice of Branch Closure.
Agency form number: FR 4031.
OMB control number: 7100–0264.
Frequency: On occasion.
Reporters: State member banks.
Estimated annual reporting hours: 291 hours.
Estimated average hours per response: Reporting requirements, 2 hours; Disclosure requirements, customer mailing, 0.75 hours and posted notice, 0.25 hours; and Recordkeeping requirements, 8 hours.
Number of respondents: Reporting requirements, 70; Disclosure requirements, customer mailing, 70 and posted notice, 70; and Recordkeeping requirements, 10.
General description of report: This information collection is mandatory (12 U.S.C. 1831r–l(a)(1)) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).
Abstract: The mandatory reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991. There is no reporting form associated with the reporting portion of this information collection; State member banks notify the Federal Reserve by letter prior to closing a branch. The Federal Reserve uses the information to fulfill its statutory obligation to supervise State member banks.
Current Actions: On January 29, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 4819) requesting public comment for 60 days on the extension, without revision, of the FR 4031. The comment period for this notice expired on March 30, 2010. The Federal Reserve did not receive any comments.

2. *Report title:* Reports Related to Securities Issued by State Member Banks as Required by Regulation H.
Agency form number: FR H–1.
OMB control number: 7100–0091.
Frequency: Quarterly and on occasion.
Reporters: State member banks.
Estimated annual reporting hours: 1,230 hours.
Estimated average hours per response: 5.17 hours.
Number of respondents: 14.
General description of report: This information collection is mandatory (15 U.S.C. 781(i) and 78w(a)(1)) and is not given confidential treatment.
Abstract: The Federal Reserve's Regulation H requires certain State member banks to submit information relating to their securities to the Federal Reserve on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission. The information is primarily used for public disclosure and is available to the public upon request.
Current Actions: On January 29, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 4819) requesting public comment for 60 days on the extension, without revision, of the FR H–1. The comment period for this notice expired on March 30, 2010. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, April 6, 2010.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 2010–8091 Filed 4–8–10; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Monday, April 26, 2010, through Wednesday, April 28, 2010, in Buffalo, New York. The sessions will take place from 8 a.m. to 5:30 p.m. on Monday through Tuesday. On Wednesday the session will be 8 a.m. to 12 p.m. The meeting will be held at the Adam's Mark Hotel located at 120 Church Street, Buffalo, New York. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public. The sleeping rooms available at the Adam's Mark, Buffalo will be at the Government rate of $92.00 (plus applicable state and local taxes, currently 13.75%) a night for a single or double. The Adam's Mark is in compliance with the requirements of Title III of the Americans with Disabilities Act and meets all Fire Safety Act regulations.

Robert C. Tapella,
Public Printer of the United States.

[FR Doc. 2010–8123 Filed 4–8–10; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0181]

Agency Information Collection Activities; Proposed Collection; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requests for exemption from the food additive listing regulation requirements that are submitted under part 170 (21 CFR part 170).

DATES: Submit written or electronic comments on the collection of information by June 8, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C.

3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Threshold of Regulation for Substances Used in Food-Contact Articles—21 CFR 170.39 (OMB Control Number 0910–0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) It conforms to an exemption for investigational use under section 409(j) of the act, (2) it conforms to the terms of a regulation prescribing its use, or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6) of the act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

The regulations in § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 part per billion (ppb). The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) The chemical composition of the substance for which the request is made, (2) detailed information on the conditions of use of the substance, (3) a clear statement of the basis for the request for exemption from regulation as a food additive, (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance, (5) results of a literature search for toxicological data on the substance and its impurities, and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (i.e., food packaging and food processing equipment) or of the articles themselves.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
170.39	7	1	7	48	336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, FDA consulted its records of the number of regulation exemption requests received in the past three years. The annual hours per response reporting estimate of 48 hours is based on information received from representatives of the food packaging and processing industries and agency records.

FDA estimates that approximately 7 requests per year will be submitted under the threshold of regulation exemption process of § 170.39, for a total of 336 hours. The threshold of regulation process offers one advantage over the premarket notification process for food-contact substances established by section 409(h) of the act (OMB control number 0910–0495) in that the use of a substance exempted by the agency is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (e.g., use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both the agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and FDA would not have to review, similar submissions for identical components of food-contact articles used under identical conditions. Manufacturers and other interested persons can easily access an up-to-date list of exempted substances which is on display at FDA's Division of Dockets Management and on the Internet at *http://www.cfsan.fda.gov*. Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the agency has previously granted an exemption from the food additive listing regulation requirement.

Dated: April 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8050 Filed 4–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0182]

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations requiring reporting and recordkeeping for processors and importers of fish and fishery products.

DATES: Submit written or electronic comments on the collection of information by June 8, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products—21 CFR Part 123 (OMB Control Number 0910–0354)—Extension

FDA regulations in part 123 (21 CFR part 123) mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (a)(4)).

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (e.g., the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided.

HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to be made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burden estimate in table 1 of this document includes only those collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. The estimate also does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors. Consequently, the estimates in table 1 account only for information collection and recording requirements attributable to part 123.

Description of Respondents: Respondents to this collection of information include processors and importers of seafood.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section[2]	No. of Recordkeepers	Annual Frequency per Recordkeeping[3]	Total Annual Records	Hours Per Record[4]	Total Hours
123.6(a),(b), and (c)	50	1	50	16.00	800
123.6(c)(5)	15,000	4	60,000	0.30	18,000
123.8(a)(1) and (c)	15,000	1	15,000	4.00	60,000
123.12(a)(2)(ii)	4,100	80	328,000	0.20	65,600
123.6(c)(7)	15,000	280	4,200,000	0.30	1,260,000
123.7(d)	6,000	4	24,000	0.10	2,400
123.8(d)	15,000	47	705,000	0.10	70,500
123.11(c)	15,000	280	4,200,000	0.10	420,000
123.12(c)	4,100	80	328,000	0.10	32,800
123.12(a)(2)	41	1	41	4.00	164
Total					1,930,264

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] These estimates include the information collection requirements in the following sections: § 123.16—Smoked Fish—process controls (see § 123.6(b)); § 123.28(a)—Source Controls—molluscan shellfish (see § 123.6(b)); § 123.28(c) and (d)—Records—molluscan shellfish (see § 123.6(c)(7)).
[3] Based on an estimated 280 working days per year.
[4] Estimated average time per 8-hour work day unless one-time response.

FDA bases this hour burden estimate on its experience with the application of HACCP principles in food processing. Further, the burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry. The hour burden of HACCP recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the size of the facility and complexity of the HACCP control scheme (i.e., the number of products and the number of hazards controlled); the daily frequency that control points are monitored and values recorded; and also on the extent that data recording time and cost are minimized by the use of automated data logging technology. The burden estimate does not include burden hours for activities that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors.

Based on its records, FDA estimates that there are 15,000 processors and 4,100 importers.

FDA estimates that 50 processors will undertake the initial preparation of a hazard analysis and HAACP plan (§ 123.6(a),(b), and (c)). FDA estimates the burden for the initial preparation of a hazard analysis and HAACP plan to be 16 hours per processor for a total burden of 800 hours. FDA estimates that all processors (15,000 processors) will undertake and keep records of 4 corrective action plans (§ 123.6(c)(5)) for a total of 60,000 records. FDA estimates the burden for the preparation of each record to be 0.30 hours for a total burden of 18,000 hours.

FDA estimates that all processors (15,000 processors) will annually reassess their hazard analysis and HACCP plan (§ 123.8(a)(1) and (c)). FDA estimates the burden for the reassessment of the hazard analysis and HAACP plan to be 4 hours per processor for a total burden of 60,000 hours.

FDA estimates that all importers (4,100 importers) will take affirmative steps to verify compliance of imports and prepare 80 records of their verification activities (§ 123.12(a)(2)(ii)) for a total of 328,000 records. FDA estimates the burden for the preparation of each record to be 0.20 hours for a total burden of 65,600 hours.

FDA estimates that all processors (15,000 processors) will document the monitoring of critical control points (§ 123.6(c)(7)) at 280 records per processor for a total of 4,200,000 records. FDA estimates the burden for the preparation of each record to be 0.30 hours for a total burden of 1,260,000 hours.

FDA estimates that 40 percent of all processors (6,000 processors) will maintain records of any corrective actions taken due to a deviation from a critical limit (§ 123.7(d)) at 4 records per processor for a total of 24,000 records. FDA estimates the burden for the preparation of each record to be 0.10 hours for a total burden of 2,400 hours.

FDA estimates that all processors (15,000 processors) will maintain records of the calibration of process-monitoring instruments and the performing of any periodic end-product and in-process testing (§ 123.8(d)) at 47 records per processor for a total of 705,000 records. FDA estimates the burden for the preparation of each record to be 0.10 hours for a total burden of 70,500 hours.

FDA estimates that all processors (15,000 processors) will maintain sanitation control records (§ 123.11(c)) at 280 records per processor for a total of 4,200,000 records. FDA estimates the burden for the preparation of each record to be 0.10 hours for a total burden of 420,000 hours.

FDA estimates that all importers (4,100 importers) will maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123 (§ 123.12(c)). FDA estimates that 80 records will be prepared per importer for a total of 328,000 records. FDA estimates the burden for the preparation

of each record to be 0.10 hours for a total burden of 32,800 hours.

FDA estimates that 1 percent of all importers (41 importers) will require new written verification procedures to verify compliance of imports (§ 123.12(a)(2)). FDA estimates the burden for preparing the new procedures to be 4 hours per importer for a total burden of 164 hours.

Dated: April 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8051 Filed 4–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0164]

Determination of Regulatory Review Period for Purposes of Patent Extension; MOZOBIL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MOZOBIL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MOZOBIL (plerixafor). MOZOBIL is indicated in combination with granulocyte-colony stimulating factor to mobilize hematopoietic stem cells to the peripheral blood for collection and subsequent autologous transplantation in patients with non-Hodgkin's lymphoma and multiple myeloma. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MOZOBIL (U.S. Patent No. 5,583,131) from Genzyme Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 29, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MOZOBIL represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MOZOBIL is 3,849 days. Of this time, 3,666 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: June 4, 1998. The applicant claims June 3, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 4, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: June 16, 2008. FDA has verified the applicant's claim that the new drug application (NDA) 22–311 was submitted on June 16, 2008.

3. *The date the application was approved*: December 15, 2008. FDA has verified the applicant's claim that NDA 22–311 was approved on December 15, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 8, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 6, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 22, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–8172 Filed 4–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response (BSC, COTPER) [1]

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC announces the following meeting of the aforementioned committee:

Time and Date: 1:30 p.m.–4 p.m. (EDT), April 26, 2010.

Place: CDC, 1600 Clifton Road, NE., Global Communications Center, Building 19, Auditorium B3, Atlanta, Georgia 30333. This meeting is also accessible by Web Conference. Please contact the BSC Coordinator (*see* Contact Person for More Information) to obtain further instructions on how to participate by phone and online.

Status: Open to the public limited only by the space available. The meeting room accommodates approximately 50 people. Participation by web conference is limited by the number of ports available. Visitors to the CDC Roybal campus must be processed in accordance with established federal policies and procedures and should pre-register for the meeting as described in Additional Information for Visitors.

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://emergency.cdc.gov/cotper/science/counselors.asp.*

Matters To Be Discussed: The agenda items for this meeting include: a briefing to the Board on the findings from the external peer review of OPHPR's Division of State and Local Readiness followed by a vote on final recommendations; updates from liaison representatives to the Board to share any key highlights of their organization's activities that are relevant to the OPHPR mission.

Additional Information for Visitors: All visitors to the CDC Roybal campus are required to present a valid form of picture identification issued by a state, federal or international government. To expedite the security clearance process for visitors to the CDC Roybal campus, all visitors must pre-register by submitting the following information by e-mail or phone (*see* Contact Person for More Information) no later than 12 noon (EDT) on Monday, April 19, 2010:

- Full Name,
- Organizational Affiliation,
- Complete Mailing Address,
- Citizenship, and
- Phone Number or E-mail Address

For foreign nationals or non-U.S. citizens, pre-approval is required. Please contact the BSC Coordinator (*see* Contact Person for More Information) in advance of the posted pre-registration deadline for additional security requirements that must be met.

Contact Person for More Information: Matthew Jennings, BSC Coordinator, OPHPR, Centers for Disease Control and Prevention, 1600 Clifton Rd., NE., Mailstop D–44, Atlanta, GA 30333, Telephone: (404) 639–7357; Facsimile: (404) 639–7977; E-mail: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Management Analysis and Service 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 Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2010.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–8178 Filed 4–8–10; 8:45 am]

BILLING CODE 4163–18–P

[1] The Coordinating Office for Terrorism Preparedness and Emergency Response has been renamed and is now the Office of Public Health Preparedness and Response (OPHPR).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Hypothermia for Stroke.

Date: April 14, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *Rc218u@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Carotid Occlusion.

Date: April 16, 2010.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *Rc218u@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 2, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8036 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

April 5, 2010.

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: April 16, 2010.

Time: 9 a.m. to 12 p.m.

Agenda: Key topics for this meeting will focus on outcomes of the Best Practices Working Group, the Enhanced Public Communications Working Group, and additional business of the committee. Further information will be available on the COPR Web site.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Sheria Washington, Executive Secretary/Outreach Program Specialist, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 331, Bethesda, MD 20892, 301–594–4837.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts of the Members.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http:// www.copr.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 31, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8040 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 7–9, 2010.

Time: 7:30 a.m. to 2 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: NIH Rocky Mountain Laboratories, Building A Seminar Room, 903 South 4th Street, Hamilton, MT 59840.

Contact Person: Kathryn C. Zoon, PhD, Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8116 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 12, 2010.

Open: 8:30 a.m. to 11:45 a.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 4:15 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: May 12, 2010.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Digestive Diseases and Nutrition Subcommittee.

Date: May 12, 2010.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: May 12, 2010.

Open: 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes Of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, PhD, Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8115 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: May 19, 2010.

Open: 8 a.m. to 12 p.m.

Agenda: Report from the Institute Director and other institute staff.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, 6th Floor, Bethesda, MD 20892.

Closed: 12:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, 6th Floor, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892. 301–496–6023. *louiser@ncrr.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ncrr.nih.gov/newspub/minutes.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: April 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8114 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Extramural Loan Repayment Review Panel.

Date: May 12, 2010.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Democracy II, 6707 Democracy Blvd, Suite 900, Bethesda, MD 20892.

Contact Person: John K. Hayes, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Democracy Two, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov*.

Dated: April 2, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8035 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: June 1, 2010.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ruixia Zhou, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Democracy II Building, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov*.

Dated: April 2, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8033 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Gene Therapy for Urea Disorders.

Date: April 27, 2010.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 2, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8032 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Psychopathology and Impulsivity.

Date: April 16, 2010.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 2, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8122 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: June 3–4, 2010.

Open: June 3, 2010, 8:30 a.m. to 5 p.m.

Agenda: Gaps and Opportunities in Health Behavior Research for NCCAM.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Conference Rooms C & D, Bethesda, MD 20892.

Closed: June 4, 2010, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Conference Rooms C & D, Bethesda, MD 20892.

Open: June 4, 2010, 11 a.m. to 4 p.m.

Agenda: Opening remarks by the Director of the National Center for Complementary and Alternative Medicine, presentation of a new research initiative, and other business of the Council.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Conference Rooms C & D, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, PhD, Executive Secretary, Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–2014.

The public comments session is scheduled from 3:30 to 4 p.m. on June 4, 2010, but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on May 26, 2010. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (June 14, 2010) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards.; 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: March 31, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8080 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of PO1 Grant Applications.

Date: April 30, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN 18F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carole H. Latker, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 2, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8082 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Interdisciplinary Molecular Sciences Specials.

Date: April 13–14, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892, (301) 435–1267, *beusend@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 2010.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–8048 Filed 4–8–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0142]

Drug and Medical Device Forum on Food and Drug Administration Drug and Device Requirements and Supplier Controls; Public Educational Forum

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public educational forum.

SUMMARY: The Food and Drug Administration (FDA) Baltimore District, in co-sponsorship with the Association of Food and Drug Officials (AFDO), is announcing a public educational forum entitled "Drugs & Medical Device Supplier Management Forum." This 2-day public educational forum, a component of AFDO's Annual Educational Conference, is intended to provide information about FDA drug and device regulation to the regulated industry.

Date and Time: The public educational forum will be held on Monday, June 21, 2010, from 8 a.m. to 5 p.m. and Tuesday, June 22, 2010, from 8 a.m. to 5 p.m.

Location: The public educational forum will be held at the Sheraton Norfolk Waterside Hotel, 777 Waterside Dr., Norfolk, VA 23510, 800–325–3535, or 757–622–6664, FAX: 757–625–8271.

Attendees are responsible for their own accommodations. To make reservations at the reduced conference rate, contact the Sheraton Norfolk Waterside Hotel before May 21, 2010, citing meeting code "AFDO Conference".

Contact: Evelyn Bonnin, Food and Drug Administration, 6000 Metro Dr., suite 101, Baltimore, MD 21215, 410–779–5424, FAX: 410–779–5707, e-mail: *Evelyn.Bonnin@fda.hhs.gov*.

Registration: You are encouraged to register by May 25, 2010. The AFDO registration fees cover the cost of facilities, materials, and breaks. Seats are limited; please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public educational forum beginning at 7:30 a.m. The cost of registration follows:

COST OF REGISTRATION

Affiliation	Fee
Government (AFDO/Central Atlantic State Association (CASA) Member)	$395.00
Government (Non-Member)	$495.00
Non-Government (AFDO/CASA Member)	$395.00
Non-Government (Non-Member)	$495.00
To be added to registration fee for event registration postmarked after May 26,2010	$75.00

If you need special accommodations due to a disability, please contact Evelyn Bonnin at least 7 days in advance of the educational forum.

Registration instructions: To register, please complete a Conference Registration Form with your name, affiliation, mailing address, phone, fax number, and e-mail, along with a check or money order payable to "AFDO". Please mail your payment to: AFDO, 2550 Kingston Rd., suite 311, York, PA 17402. The registration form is available at *http://www.afdo.org*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

The registrar will also accept payment by major credit cards (VISA/MasterCard only). For more information on the meeting, or for questions on registration, contact AFDO, 717–757–2888, FAX: 717–650–3650, or e-mail: *afdo@afdo.org*.

SUPPLEMENTARY INFORMATION: The public educational forum helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The educational forum will provide FDA-regulated drug and device entities with information on a number of topics concerning FDA requirements related to the production and marketing of drugs and/or devices. Topics for discussion include the following:

- Regulating Medical Products in the Global Environment
- FDA Revitalization Efforts—Top 10 Drug & Device 483 Observations
- FDA's Expectations for Supplier Controls
- FDA Import District Activities—Monitoring Foreign Drug and Device Suppliers
- Do's and Don'ts for Implementing Effective Quality Agreements
- Case Studies—Supplier Controls
- Supplier Quality in a Global Economy—Consensus Standards
- Inspectorate, Health Canada
- Building an Effective Supplier Control Program
- FDA's International Posts—Update on Activities and Future Plans
- FDA Recalls—A Focus on Supplier-Related Incidents & Other Compliance Initiatives
- Supplier Auditing—Tools of the Trade

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The educational forum helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The educational forum also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

Dated: April 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–8087 Filed 4–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration on Aging.

ACTION: Notice.

SUMMARY: Statement of Organization, Functions, and Delegations of Authority.

This reorganization of AoA will achieve several important objectives: It will strengthen the organization by establishing strategic focal points for the agency's policy, programmatic and administrative functions; elevate AoA's National Long-Term Care Ombudsman activities; improve the integration of AoA's strategic planning, policy analysis, evaluation and program development functions; and consolidate programmatic operations to enhance the organization's capacity to implement the provisions of the Older Americans Act which seek to assist older Americans to remain at home by streamlining access to community-based care and empowering older adults to take more control of their own health

through lifestyle and behavioral changes.

FOR FURTHER INFORMATION CONTACT: Dan Berger, Administration on Aging, 1 Massachusetts Avenue, NW., Washington, DC 20201, 202–357–3419.

This notice amends Part B of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration on Aging (AoA), as follows: Part B, Administration on Aging (73 FR 1347–1354), as last amended, January 8, 2008. The changes are as follows:

I. Delete Part B, "The Administration on Aging" in its entirety and replace with the following:

B.00 Mission
B.10 Organization
B.20 Functions

B.00 Mission. The Administration on Aging (AoA) is the principal agency designated to carry out the provisions of the Older Americans Act ("OAA" or "The Act") of 1965, as amended, 42 U.S.C. 3001 *et seq.;* the Alzheimer's Disease Demonstration Grants to States Program, established under section 398 of the Public Health Service Act (PHSA), as amended, 42 U.S.C. 280c–3; and the Lifespan Respite Care Program, established under Title XXIX of the PHSA, 42 U.S.C. 201. AoA's mission is to help elderly individuals maintain their dignity and independence in their homes and communities through comprehensive, coordinated, and cost effective systems of long-term care, and livable communities across the United States. AoA serves as the effective and visible advocate for older persons within the Department of Health and Human Services (HHS) and with other Federal agencies.

B.10 Organization. AoA is an Operating Division (OPDIV) of HHS, which is headed by the Assistant Secretary for Aging who reports directly to the Secretary. In addition to the Assistant Secretary, the AoA consists of the Principal Deputy Assistant Secretary and Staff and Program Offices. AoA is organized as follows:

Office of the Assistant Secretary (BA)
Office of the Principal Deputy Assistant Secretary (BB)
Center for Management and Budget (BE)
Center for Program Operations (BF)
Center for Policy, Planning, and Evaluation (BH)

B.20 Functions. AoA assists the Secretary in all matters pertaining to opportunities and challenges of the elderly. Advocates for the needs of older persons in program planning and policy development within the Department and in other Federal agencies. Advises the Secretary, Departmental components and other Federal departments and agencies on the characteristics, circumstances and needs of older people and develops policies, plans and programs designed to promote their welfare.

Develops, recommends and issues policies, procedures and interpretations to provide direction to the programs it administers, including Titles II, III, IV, VI, and VII of the OAA, as well as the Lifespan Respite Care and the Alzheimer's Disease Demonstration Grants to States programs. Administers a program of mandatory grants to States to establish State and community programs for older persons; and administers a program of grants to American Indians, Alaskan Natives and Native Hawaiians to establish programs for older Native Americans. Provides policy and procedural direction, advice and assistance to States and Native American grantees to promote the development of State and Native American-administered, community-based service systems of comprehensive social services for older persons.

Administers long-term care ombudsman, protective services programs and legal services development programs for older people. Approves or disapproves State plans and Native American funding applications. Administers programs of training, research and demonstration. Administers national centers for service development and assistance, and information dissemination benefiting older persons.

Promotes through the State and Area Agencies on Aging and Indian Tribal Organizations a national community-based long-term care program for older persons. Develops and issues program designs, guidelines, standards and assistance to State and Area Agencies, Indian Tribal Organizations.

The functions of the organizational units of AoA are described in detail in the succeeding Parts.

A. Office of the Assistant Secretary (BA):

BA.00 Mission
BA.10 Organization
BA.20 Functions

BA.00 Mission. The Office of the Assistant Secretary provides executive direction, leadership, and guidance for OAA programs and the PHSA Alzheimer's Disease Demonstration Grants to States and Lifespan Respite Care Programs, and serves as the focal point for the development, coordination and administration of those programs nationwide. The Office advises the Secretary on issues affecting America's elderly population.

BA.10 Organization. The Office of the Assistant Secretary is headed by an Assistant Secretary, who reports to the Secretary. The Office includes the following components:

Immediate Office of the Assistant Secretary (BA)
Congressional and Public Affairs (BAA)
National Long-Term Care Ombudsman (BAB)

BA.20 Functions.

1. Immediate Office of the Assistant Secretary (BA). The Immediate Office of the Assistant Secretary (IOAS) is responsible to the Secretary for carrying out AoA's mission and provides executive supervision to the major components of AoA. The Office serves as the effective and visible advocate within the Federal government to ensure the rights and entitlements of the elderly.

Sets national policies, establishes national priorities, ensures policy consistency, and directs plans and programs conducted by AoA. Advises the Secretary, HHS agencies, and other Federal agencies on the characteristics, circumstances, and needs of older people, and on policies, plans and programs designed to promote their welfare.

In collaboration with other Federal agencies, develops and implements interagency agreements to assist older persons. Provides liaison with other Federal advisory committees focused on the aging. Works with national aging organizations, professional societies, and academic organizations to identify mutual interests and plan voluntary and funded approaches to meet the needs of older persons. Ensures affirmative action throughout the Aging Network in employment and service delivery.

2. Congressional and Public Affairs (BAA). Congressional and Public Affairs supports the Assistant Secretary in the effective communication of AoA policies, goals, and objectives. In coordination with the Department, manages AoA's media relations and legislative liaison activities.

Coordinates the development of legislative proposals, testimony, background statements, and other policy documents for use by the Assistant Secretary in activities related to legislation. In coordination with the HHS Office of the Assistant Secretary for Legislation, analyzes proposed and enacted legislation related directly or indirectly to older people, including legislation directly affecting OAA programs. Utilizes automated legislative information systems to track bills

related to the aging. Develops and issues status reports regarding key legislative developments to Central Office and Regional Support Centers staff, the network of State and Area Agencies on Aging, and Indian Tribal Organizations.

Coordinates with the Office of the Assistant Secretary for Public Affairs, including planning and implementing strategy for relations with the news and other information media. Initiates media outreach activities and responds to all media inquiries concerning AoA programs and related issues.

3. National Long-Term Care Ombudsman (BAB). The National Long-Term Care Ombudsman serves as and carries out the functions of the Office of Long-Term Care Ombudsman Programs established in Section 201(d)(1) of the OAA. Serves as the effective and visible advocate regarding Federal policies and laws that may adversely affect the health, safety, welfare, or rights of older residents of long-term care facilities.

Reviews Federal legislation, regulations, and policies regarding long-term care ombudsman programs and makes recommendations to the Assistant Secretary. Coordinates the activities of AoA with other Federal, State and local entities relating to long-term care ombudsman programs; prepares an annual report to Congress on the effectiveness of services provided by State long-term care ombudsman programs; and establishes standards for the training of State long-term care ombudsman staff.

Works with the Office of Elder Rights to administer the Long-Term Care Ombudsman Program established under section 712 of the OAA and the National Ombudsman Resource Center established under section 202(a)(21) of the OAA. Make recommendations to the Assistant Secretary regarding the operation of the National Ombudsman Resource Center, and the review and approval of the provisions in State plans submitted under section 307(a) of the OAA that relate to State Long-Term Care Ombudsman programs.

B. Office of the Principal Deputy Assistant Secretary (BB):

BA.00 Mission
BA.10 Organization
BA.20 Functions

BA.00 Mission. The Office of the Principal Deputy Assistant Secretary supports the Office of the Assistant Secretary in providing executive direction, leadership, and guidance for agency programs and operations, particularly in the areas of intergovernmental affairs and the administration of regional operations. The Office works with the Assistant Secretary to support the development, coordination and administration of programs and issues affecting America's elderly population.

BA.10 Organization. The Office of the Principal Deputy Assistant Secretary is headed by a Deputy Assistant Secretary, who reports to the Assistant Secretary. The Office includes the following components:

Immediate Office of the Principal Deputy Assistant Secretary (BB)
Executive Secretariat (BBA)
Regional Support Centers (BBB1–BBBX)

BA.20 Functions.

1. Immediate Office of the Principal Deputy Assistant Secretary (BB). The Immediate Office of the Principal Deputy Assistant Secretary (IOPDAS) supports the Assistant Secretary in advancing the concerns and interests of older people and their caregivers. The Principal Deputy Assistant Secretary serves as the Assistant Secretary's primary associate in carrying out AoA's mission, goals, and objectives.

Develops and maintains effective relationships with government entities and their representatives at the Federal, State and local levels to develop a unified policy toward, and promote, the aims of the OAA, especially as they relate to a community-based system of long-term care for the aging and disabled. Supports the development of more responsive service systems through intergovernmental and private sector initiatives and partnerships to address age-related issues and concerns.

The Principal Deputy Assistant Secretary also serves as the AoA Reports Clearance Officer and is the AoA principal liaison with the Office of the General Counsel (OGC), the Office of the Inspector General (OIG), and the Government Accountability Office (GAO) regarding reviews of AoA programmatic activities conducted by these entities.

2. Executive Secretariat (BBA). The Executive Secretariat (ES) coordinates essential policy and program concerns and ensures that issues requiring the attention of the Assistant Secretary, Principal Deputy Assistant Secretary, and other executive staff are addressed on a timely and coordinated basis. It serves as the AoA liaison with the HHS Executive Secretariat.

Receives, assesses, and controls incoming correspondence and assignments to the appropriate AoA component(s) for response and action; provides assistance and advice to AoA staff on the development of responses to correspondence and on the controlled correspondence system; and tracks development of periodic reports and facilitates departmental clearance. Maintains official copies of all policy and information issuances and data collection instruments, ensuring proper clearance before issuance and annually reviewing for accuracy and compliance with laws and regulations. Serves as records manager providing assistance to both Central Office and Regional staff regarding filing practices, retention and disposition of records.

Reviews all materials for **Federal Register** publication, ensuring compliance with guidelines. Serves as liaison with the Office of the Federal Register on regulatory actions and the OIG and the GAO on all program matters other than those related to financial management, grants, or procurement management. Serves as the Freedom of Information Act (FOIA) Officer for AoA, reviews FOIA requests, and arranges for appropriate responses in coordination with the HHS FOIA Officer. Coordinates mandated OMB approvals required under the Paperwork Reduction Act of 1980, as amended.

3. Regional Support Centers (BBB1–BBBX). The Regional Support Centers report to the Principal Deputy Assistant Secretary. The central office regional liaisons supports the Principal Deputy Assistant Secretary in coordinating the operations of the Regional Support Centers, each of which is headed by a Regional Administrator (RA). The central office regional liaisons also coordinate with AoA's Regional Support Centers and aging network organizations to assess and respond to the needs of older individuals following a Presidential disaster declaration; oversee disaster assistance and reimbursement activities pursuant to Section 310 of the OAA; serve as the primary liaison with the Secretary's Operations Center, the Office of the Assistant Secretary for Preparedness and Response, and various interagency working groups to represent AoA and the unique interests of older individuals and other special needs populations; and work with HHS, other Federal agencies, and other national, State, local and Tribal entities to develop operational plans and training to ensure the preparedness of AoA and the Aging Network to respond to threats, disasters and emergencies.

The Regional Support Centers serve as the focal point for the development and coordination of OAA programs within the designated HHS region. Represent the Assistant Secretary for Aging within the region, providing information for, and contributing to the development of, national policy dealing with the elderly. Based on national policy and priorities, establish field program goals and objectives. Serve as the effective and

visible advocates for the elderly to Federal agencies in their geographic jurisdiction to ensure the rights of the elderly; advise, consult and cooperate with each Federal agency proposing or administering programs or services related to the aging; coordinate and assist in the planning and development by public (including Federal, State, Tribal and local agencies) and private organizations of comprehensive and coordinated services and opportunities for older individuals in each community of the nation; and conduct active public education of officials and citizens and the aged to ensure broad understanding of the needs and capabilities of the aged.

Monitor, assist and evaluate State Agencies on Aging administering programs supported under Titles II, III and VII of the OAA, and Indian Tribal Organizations administering projects under Title VI. Participates in the review OAA State Plans on Aging and recommend approval or disapproval to the Assistant Secretary for Aging, as appropriate. Participates in the review of applications and recommend approval or disapproval of Title VI applications to the Assistant Secretary.

Advise the Assistant Secretary of problems and progress of programs through the Principal Deputy Assistant Secretary; recommend to the Assistant Secretary changes that would improve OAA operations; evaluate the effectiveness of OAA and related programs in the Regions and recommend to the Assistant Secretary or take positive action to gain improvement; and guide agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional Support Center, State and Tribal levels to enhance resources and assistance available to the elderly. Disseminate and provide technical assistance regarding program guidelines and developments to State and Area Agencies, Indian Tribal Organizations and local community service providers.

B. Center for Management and Budget (BE):

BE.00 Mission
BE.10 Organization
BE.20 Functions

BE.00 Mission. The Center for Management and Budget (CMB) advises the Assistant Secretary for Aging on the budget, financial, grants, information resources, procurement, administrative and human resources management activities of AoA.

BE.10 Organization. The Center for Management and Budget is headed by a Deputy Assistant Secretary who reports directly to the Assistant Secretary for Aging. The Center is organized as follows:

Office of the Deputy Assistant Secretary for Management and Budget (BE)
Office of Budget and Finance (BE1)
Office of Administration and Personnel (BE2)
Office of Grants Management (BE3)
Office of Information Resources Management (BE4)

BE.20 Functions.

1. Office of the Deputy Assistant Secretary for Management and Budget (BE). The Office of the Deputy Assistant Secretary for Management and Budget (ODASMB) directs and coordinates all activities of the Center. The Deputy Assistant Secretary serves as the AoA's Chief Financial Officer (CFO) and Chief Information Officer (CIO) and is the principal advisor and counselor to the Assistant Secretary for Aging on all aspects of the internal administration and management of AoA.

Serves as the AoA liaison with the Office of the Assistant Secretary for Administration, the Office of the Assistant Secretary for Financial Resources (ASFR), the OGC, the OIG, and the Office of Management and Budget (OMB) for areas under CMB's purview. Develops, administers, and coordinates financial, operational, and budgetary policies, processes, and controls necessary to administer AoA programs and financial resources; directs discretionary and mandatory grants activities; oversees the utilization of information resources, information technology systems and telecommunications management; provides leadership for human capital development; and coordinates AoA's internal control activities.

Coordinates with other components to carry out reviews of program activities and management practices required under the Chief Financial Officers Act, the Federal Managers Financial Integrity Act, the Improper Payments Information Act, the Federal Information Security Management Act, and other legislation. Monitors legislation related to administrative management and provides analysis of the impact on AoA programs and resources. Plans, organizes and conducts studies of organizational structures, functional statements, job structures, staffing patterns, and management and administrative information systems; and identifies and resolves problems of organization and administrative management. Prepares and maintains organizational functional statements and delegations and designations of authority for AoA.

2. The Office of Budget and Finance (BE1). The Office of Budget and Finance (OBF) supports the Deputy Assistant Secretary for Management and Budget in fulfilling AoA's Chief Financial Officer responsibilities. The OBF Director serves as the Deputy Chief Financial Officer and Management Control Officer and oversees and coordinates AoA's budget formulation, budget execution, and financial management activities. OBF serves as the primary liaison with the Program Support Center's Division of Financial Operations, which provides accounting, audit, and financial management services to AoA.

In coordination with AoA program offices, formulates and presents budget estimates; executes apportionment documents; and plans, directs, and coordinates financial and budgetary programs of AoA. Provides guidance to AoA program offices in preparing budgets, justifications, and other supporting budgetary materials. Solicits, obtains and consolidates information and data from other AoA offices, and prepares budget documents on behalf of the Assistant Secretary for presentation to the Department, OMB, and the Congress.

Analyzes the budget as approved by the Congress and apportioned by OMB, obtains input from program offices and recommends for the Assistant Secretary's approval a financial plan for its execution. Makes allowances to AoA offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both program—including all mandatory and discretionary grant accounts—and Salaries and Expense funds; maintains administrative control of funds against allotments and allowances; certifies funds availability for all AoA accounts; and coordinates the management of AoA's interagency agreement activities. Prepares requests for apportionment of appropriated funds; and prepares spending plans and status-of-funds reports for the Assistant Secretary.

Develops financial operating procedures and manuals; coordinates the preparation of AoA's financial audits; and provides analysis on financial issues. Ensures that AoA has internal controls in place for its administrative and programmatic activities that provide reasonable assurance of the effectiveness and efficiency of operations and compliance with applicable laws and regulations. Conducts annual reviews and assessments of internal controls required under the Federal Managers

Financial Integrity Act and ensures compliance with the GAO and OMB standards. Serves as the AoA liaison with the Office of the Secretary and OMB on all budgetary and financial matters.

Acts as AoA's coordination point for all travel management activities. Provides technical assistance and oversight on the use of the GovTrip system; manages employee participation in the Travel Charge Card program, and coordinates Travel Management Center services for AoA.

3. Office of Administration and Personnel (BE2). The Office of Administration and Personnel (OAP) provides support to AoA in the areas of human capital development, personnel, facilities, acquisitions, and other administrative services. The OAP Director serves as the Chief Human Capital Officer and provides leadership for the strategic planning and operational management of the AoA's human capital resources. OAP serves as the primary liaison to the Program Support Center's Division of Acquisition Management, which provides procurement services to AoA; and the Rockville Human Resources Center, which provides personnel support services to AoA.

Develops and implements human capital strategies and strategic workforce plans; directs the development and creation of strategies to attract diverse talent and develop a highly skilled workforce; and provides leadership in the development of plans for achieving short- and long-range human capital goals. Provides leadership and guidance to meet the human resource management needs and coordinates internal and external resources to provide staff with personnel services including position management, performance management, employee recognition, staffing, recruitment, employee and labor relations, employee assistance, payroll liaison, staff development and training, and special hiring and placement programs.

Provides oversight and direction to meet the administrative needs of AoA components. Prepares, coordinates and disseminates information, policy and procedural guidance on human resource and administrative management issues on an agency-wide basis. Serves as liaison with the Office of the Secretary, the General Services Administration (GSA), and outside vendors to plan, develop and coordinate guidelines and activities for space and facilities services. Serves as the lead for AoA in coordination and liaison with Departmental, GSA, Federal Protective Service, and other Federal agencies for planning and executing the Agency's environmental health, safety and physical security programs.

Assists other AoA components in securing contractor assistance by advising on appropriate acquisition vehicles, developing statements of work and independent cost estimates, and managing the technical aspects of contracts. Coordinates with the Office of Information Resources Management to develop and implement procurement strategies for information technology support services; review all information technology acquisition documentation for compliance with applicable laws and regulations; and define the specifications for procurement of all hardware and software. Monitors the use of credit cards for small purchases and establishes and manages contracts and/or blanket purchase agreements for administrative support and facilities management services.

4. Office of Grants Management (BE3). The Office of Grants Management (OGM) serves as AoA's focal point for the management, leadership and administration of discretionary and mandatory grants, and cooperative agreements. The OGM Director serves as the Chief Grants Management Officer and provides national policy oversight and development for grants management and administration matters. The Office ensures that all grant awards conform to applicable statutory, regulatory, and administrative policy requirements, both before and following award. Maintains liaison and coordination with appropriate AoA and HHS organizations to ensure consistency between AoA discretionary and mandatory grant award activities, including the Program Support Center's Division of Payment Management, which provides payment system services for grants.

Ensures that the administrative, business and financial management aspects of discretionary grants administration are carried out and grantee performance is monitored. Performs cost analysis/budget analysis for all discretionary grant award documents and negotiates grant budgets, executing all awards for AoA. Advises and assists management and program officials in developing, implementing and evaluating program plans, strategies, regulations, announcements, guidelines and procedures. Recommends approval or disapproval of any grant applications based on programmatic considerations. Only the Office of Grants Management has the authority to obligate the Government to the expenditure of funds for grants and cooperative agreements. Serves as liaison with other offices in the Department.

Issues and maintains control over mandatory grant awards under the OAA and other authorizing legislation, and makes adjustments to previously issued mandatory grant awards. In coordination with all AoA Central Office and Regional Support Centers having grant administrative responsibilities: Reviews and assesses AoA mandatory grant award procedures; directs and/or coordinates management initiatives to improve mandatory grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among AoA programs; establishes priorities and develops procedures for grantee financial monitoring; and reviews activities at the field level for all AoA discretionary and mandatory grant programs. For mandatory grant activities, develops financial management standards for State and Area Agencies and provides guidance on and interpretation of applicable Federal regulations to AoA staff. Based on mandatory grants management policies and procedures approved by the Department, reprograms mandatory grant funds as required under the OAA. Following consultation with all Central Office and Regional Support Centers having grant administrative responsibilities, and with the approval of the Assistant Secretary: Develops AoA instructions and procedures for the administration of the business aspects of all mandatory and formula grants, including those approved in AoA Regional Support Centers.

Provides training, technical assistance, overall guidance, monitoring and assistance to AoA staff in all areas of administrative and financial management of grants. Has primary responsibility for developing grants management policy issuances, and ensuring consistent policy interpretation within AoA concerning grants management. Serves as AoA liaison with the GAO, the HHS OIG and the Department's Office of Grants on grant matters. Assists at discretionary and mandatory grant hearings, before the Departmental Appeals Board, in response to disallowances and other financial claims by AoA, State Agencies on Aging, and other grantees. Responds to Departmental and OIG audit reviews, ensuring proper analysis and resolution of audit findings by Regional Support Centers for final action by the Assistant Secretary. Coordinates receipt and processing of all grants and related materials.

5. Office of Information Resources Management (BE4). The Office of Information Resources Management (OIRM) oversees and coordinates the provision of information technology services for AoA. The OIRM Director serves as the Deputy Chief Information Officer and prepares, coordinates and disseminates information, policies, standards, guidelines, and procedures on information technology management issues. OIRM serves as the primary liaison to the Program Support Center's Office of Information Technology Infrastructure Operations, which provides for the management, maintenance and operation of AoA's information technology systems infrastructure, including the LAN, personal computers, software, and support services.

Serves as liaison with the Office of the Secretary, GSA, and outside vendors to plan, develop and coordinate guidelines and activities for telecommunications services. Provides telecommunications planning and management, including procurement, installation, and maintenance of telecommunications equipment and services such as telephones, cellular phone service, cable TV service, and audio and video conferencing equipment and services.

In coordination with the Office of Administration and Personnel, develops and implements procurement strategies for information technology support services. Reviews all information technology acquisition documentation for compliance with applicable laws and regulations and defines the specifications for procurement of all hardware and software. Identifies opportunities to share information technology services through inter-governmental, inter-departmental and inter-agency agreements.

Manages the development of AoA custom applications, systems, and Web sites; oversees training and technical assistance for all AoA systems, hardware and software; and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the systems. Directs and coordinates AoA's systems security and privacy responsibilities, including protection, security and integrity of AoA data; and is responsible for establishing and maintaining a secure Inter- and intranet presence. Represents AoA on the Department's Chief Information Officer's Council and other Departmental information technology policy and planning boards, teams, and workgroups.

D. Center for Program Operations (BF)

BF.00 Mission

BF.10 Organization

BF.20 Functions

BF.00 Mission. The Center for Program Operations (CPO) advises the Assistant Secretary for Aging on and provides leadership related to programs operated under the OAA and the PHSA.

BF.10 Organization. The Center for Program Operations is headed by a Deputy Assistant Secretary who reports directly to the Assistant Secretary for Aging. The Center is organized as follows:

Office of the Deputy Assistant Secretary for Program Operations (BF)

Office of Home and Community-Based Services (BF1)

Office of American Indian, Alaskan Native, and Native Hawaiian Programs (BF2)

Office of Elder Rights (BF3)

Office of Outreach and Consumer Information (BF4)

BF.20 Functions

1. Office of the Deputy Assistant Secretary for Program Operations (BF). The Office of the Deputy Assistant Secretary for Program Operations (ODASPO) provides expertise on program development, advocacy and initiatives within assigned areas. Provides leadership on behalf of Titles III, VI and VII of the OAA; those parts of Title II and Title IV of the OAA for which the Center is responsible; and Title XXIX of the Public Health Service Act (PHSA). Plans and directs the programs under the OAA designed to provide planning, coordination and services to older Americans through grant programs authorized under Titles II, III, IV, VI, and VII of the OAA.

Consults with and provides technical assistance to and education for State and Area Agencies on Aging, Tribal grantees, and local community service providers in the development of plans, goals, and system development activities. Ensures that statutory requirements, regulations, policies, and instructions are implemented for Titles III, VI and VII, and for the functions under Title II and Title IV of the OAA for which the Center is responsible, as well as for Title XXIX of the PHSA. In addition, the Deputy Assistant Secretary provides oversight and leadership to the Nutrition Officer established in Title II of the OAA who provides technical assistance and guidance to Regional Support Centers, States, Area Agencies on Aging and community service providers.

Works with the Principal Deputy Assistant Secretary to provide technical guidance to the Regional Support Centers as they implement the national programs of the OAA and ensure that clear and consistent guidance is given on program and policy directives. Issues substantive operating procedures to guide Central Office and Regional staff of AoA in the conduct of their programmatic responsibilities.

2. Office of Home and Community-Based Services (BF1). The Office of Home and Community-Based Services (OHCS) serves as the focal point within AoA for the operation, administration, management, and assessment of the programs authorized under Title III of the OAA and Title XXIX of the PHSA. In addition, the Office performs functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about aging services and programs in order to enhance service coordination and delivery.

Implements Title III of the OAA through the development of regulations, policies and guidance governing the development and enhancement of comprehensive and coordinated home and community-based care service delivery systems by State and Area Agencies on Aging. This includes implementing and enhancing systems for supportive services and the operation of multi-purpose senior centers, congregate and home-delivered nutrition services, health promotion and disease prevention services, and caregiver support and assistance services.

Provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III funds among States. Fosters, oversees, ensures accountability and assesses the implementation of Title III by States and Area Agencies through guidance and direction to Regional staff regarding program reviews and program and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement.

Directs and assesses the development of State-administered, home and community-based long-term care systems, and social and supportive services for the elderly. Initiates and encourages expansion of the capacities of home and community-based social service and health care systems to deliver comprehensive services to the elderly. Provides technical and subject matter expertise for the development of these systems, targeted at enhancing the capabilities of State and Area Agencies and local community service delivery

programs to improve their service to older people. Provides specialized input on programs under the OAA to long-range planning, operational plans and the budget process.

Carries out the functions of the designated nutrition officer, who coordinates nutritional services under the Act and develops the regulations and guidelines, and provides technical assistance regarding nutrition to the AoA Regional Support Centers, State and Area Agencies, nutrition service providers, and other organizations. Serves as the liaison to the United States Department of Agriculture and other Federal agencies and organizations related to nutrition policy and program issues.

Works with the Office of Performance and Evaluation to conduct operational studies, program analyses, and evaluations on special issues of concern to the Secretary, the Assistant Secretary, and State and Area Agencies on Aging. Prepares reports on program operations under Title III for the Assistant Secretary, other AoA offices, the Secretary, the President, Congress and the public. Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential Title III program and management issues and develops recommendations to the Assistant Secretary on possible solutions.

3. Office for American Indian, Alaskan Native, and Native Hawaiian Programs (BF2). The Office for American Indian, Alaskan Native, and Native Hawaiian Programs (OAIANNHP) administers programs authorized by Title VI of the OAA. On behalf of individuals who are older Native Americans, serves as the effective and visible advocate within the Department, with other Departments and agencies of the Federal Government, and with State, local and tribal governments providing leadership and coordination of activities, services and policies affecting American Indians, Alaskan Natives and Native Hawaiian elders. Advocates and promotes linkages among national Indian organizations, national aging organizations, and national provider organizations with the goal of enhancing the interests of and services to Native American elders. Recommends to the Assistant Secretary policies and priorities with respect to the development and operation of programs and activities relating to individuals who are older Native Americans. The Office coordinates activities among other Federal departments and agencies to ensure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination.

Carries out the following responsibilities of Title II: Evaluates the outreach under Title III and Title VI and recommends necessary action to improve service delivery, outreach, and coordination between Title III and Title VI services; encourages and assists the provision of information to older Native Americans with need for Supplemental Security Income, Medicaid, food assistance, housing assistance, and transportation assistance; develops research plans, conducts and arranges for research in the field of Native American aging; collects, analyzes, and disseminates information related to problems experienced by older Native Americans, including information on health status of older individuals who are Native Americans, elder abuse, in-home care, and other problems unique to Native Americans; develops, implements, and oversees the uniform data collection procedures for Tribal and Native Hawaiian Organizations; and implements and oversees the consultation requirements of Title II as they apply to Native American issues.

Collaborates with the Office of Home and Community-Based Services on Title VI—Title III coordination. Provides specialized input on Title VI programs and the Native American components of Title II and Title VII–B programs to other offices for long-range planning, operational plans, research and training, and the budget process. Develops testimony and background documents concerning Native Americans for use by the Assistant Secretary.

Serves as the AoA focal point for the administration of the programs authorized under Title VI and the Native American Organization provisions of Title VII–B of the OAA, including administering grants, cooperative agreements and contracts. Implements the American Indian, Alaskan Native, and Native Hawaiian programs in the field through provision of program guidance, policy direction, and training to the Regional Support Centers in the execution of the Native American components of their Title II, Title VI and Title VII–B responsibilities. Coordinates with the Regional Support Centers for monitoring of Title VI grantees.

Oversees the development and operation of Resource Centers on Native American Elders, which gather information, perform research, provide for dissemination of results of the research, and provide technical assistance and training to those who provide services to Native American elders. Arranges for and manages ongoing training and technical assistance for Title VI grantees. Coordinates additional training and technical assistance with other projects managed by other components of the agency.

Chairs the Interagency Task Force on Older Indians which is comprised of representatives from the Federal departments and agencies with an interest in the welfare of individuals who are older Indians and makes recommendations to the Assistant Secretary at six-month intervals, to facilitate coordination among Federally funded programs and improve services to older Indians.

4. Office of Elder Rights (BF3). The Office of Elder Rights (OER) provides support to the Deputy Assistant Secretary for Program Operations for the administration of the elder abuse prevention, legal assistance development, and pension counseling provisions of Titles II and VII of the OAA throughout the Aging Network. The Office also works with the National Long-Term Care Ombudsman to carry out the Long-Term Care Ombudsman Program established under section 712 of the OAA and the National Ombudsman Resource Center established under section 202(a)(21) of the OAA, and conducts staff functions in support of these programs. In addition, OER administers the Senior Medicare Patrol projects under Title IV of the OAA and the Health Insurance Portability and Accountability Act of 1997.

Reviews State Plans to determine eligibility for funding under the OAA and recommends approval or disapproval to the Assistant Secretary. Implements Title VII in the field, in coordination with the National Long-Term Care Ombudsman, through the provision to Regional Support Centers of guidance and information concerning AoA programs, and the development and interpretation of Title VII program regulations and policy. Ensures the implementation of guidance and instructions concerning long-term care ombudsman, prevention of elder abuse, and elder rights and legal assistance development programs. Provides guidance and leadership in the development of the pension counseling program and effective models for nationwide replication.

Fosters, coordinates, and ensures accountability for the implementation of Title VII by States through guidance and direction to Regional staff regarding program reviews, and program and system development and enhancements. Designs and provides training and technical assistance for program

compliance, effectiveness, and enhancement.

Serves as the agency's focal point for coordinating, implementing, monitoring, expanding, and promoting efforts to provide consumer information, education and protection designed to detect, prevent and report error, fraud and abuse in the Medicare and Medicaid programs. Provides in-depth expertise, information, leadership and technical assistance through the Regional Support Centers to the Senior Medicare Patrol network and serves as a reliable clearinghouse of information for the aging network, older persons and their families. Provides specialized input on Title VII and consumer protection programs to long-range planning, operational plans and the budget process. Develops program plans and instructions for AoA Regional Support Centers and State and Area Agencies to improve the Title VII protection and representational programs funded under the OAA.

5. Office of Outreach and Consumer Information (BF4). The Office of Outreach and Consumer Information (OOCI) provides leadership and a central strategic focus for AoA's information and referral, education, consumer service, benefits enrollment, and outreach strategies and activities. The Office is responsible for developing information dissemination and outreach strategies for AoA and the National Aging Network; coordinating the development of information materials, both printed and electronic; and managing the content of AoA's Web site and social media operations.

In conjunction with the Immediate Office of the Assistant Secretary, implements public education activities to support the achievement of AoA program objectives; develops and distributes publications and audiovisual materials about older people and prepares and issues brochures, fact sheets, and exhibits on the needs and concerns of older persons and measures to improve the circumstances, available services, and environment for the older population. Develops special information campaigns to inform older people and the general public about issues, problems and benefits important to older people. Fosters, plans and coordinates ceremonies and celebrations related to the elderly.

Oversees the development and operation of resource centers, clearinghouses, and other activities providing information and referral services to seniors and caregivers; and provides technical assistance and training in support of these activities. Implements technical assistance, outreach, and information dissemination programs that are culturally and linguistically appropriate in order to meet the needs of diverse populations of older individuals. Conducts multigenerational and civic engagement programs that encourage community capacity-building involving older individuals and demonstrate effectiveness and cost savings in meeting critical needs. Develops strategies to promote financial literacy and education for older populations.

At all levels, from national to the local service delivery level, develops methods and collaborations to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age-related needs and issues. Oversees the international liaison functions of AoA, coordinating AoA international activities with Departmental as well as other Federal agencies, States and national organizations concerned with international aging matters.

Compiles, publishes, and disseminates information on programs funded under the Act, as well as demographic data on the elderly population and data from other Federal agencies on the health, social and economic status of older persons. Promotes information dissemination in professional fields. Ensures dissemination of information such as best practice models to exchange program experience with the network of State and Area Agencies on Aging; and works with organizations in the field of aging and with other organizations in fields that impact older persons to enhance the dissemination of consumer and technical information. Works with the Office of Performance and Evaluation to ensure the successful collection of data and its analysis to demonstrate the effectiveness of AoA dissemination activities. Ensures that program and service information and trends are disseminated to advocates for older persons.

Center for Planning, Policy and Evaluation (BH):

BE.00 Mission
BE.10 Organization
BE.20 Functions

BE.00 Mission. The Center for Planning, Policy and Evaluation (CPPE) advises and supports the Assistant Secretary for Aging in developing effective Federal policies and programs to address the aging of the population.

BE.10 Organization. The Center for Planning, Policy and Evaluation is headed by a Deputy Assistant Secretary who reports directly to the Assistant Secretary for Aging. The Center is organized as follows:

Office of the Deputy Assistant Secretary for Planning, Policy and Evaluation (BH)
Office of Program Innovation and Demonstration (BH1)
Office of Performance and Evaluation (BH2)
Office of Policy Analysis and Development (BH3)

BE.20 Functions:

1. Office of the Deputy Assistant Secretary for Planning, Policy and Evaluation (BH). The Office of the Deputy Assistant Secretary for Planning, Policy and Evaluation (ODASPPE) advises and supports the Assistant Secretary for Aging in serving as the visible and effective advocate for older people within the Federal Government. Leads the agency's strategic planning, policy analysis, evaluation and program development functions, including the formulation of short- and long-term strategies for advancing the Assistant Secretary's policy and program priorities.

Serves as the focal point within AoA for identifying and analyzing emerging policy issues and trends related to the aging population and appropriate Federal responses. Formulates an agency-wide policy and program development strategy consistent with the priorities established by the Assistant Secretary. Performs functions under Title II of the OAA related to consultation with other Federal agencies and the provision of information about aging services, programs and policies in order to enhance coordination and delivery.

Plans and directs the evaluation of programs under the OAA designed to provide planning, coordination and services to older Americans through grant programs authorized under Titles II, III, IV, VI, and VII of the OAA. The Deputy Assistant Secretary serves as the Performance Improvement Officer and is the primary AoA liaison with the Office of the Assistant Secretary for Planning and Evaluation, ASFR, and OMB for program performance and evaluation activities

2. Office of Program Innovation and Demonstration (BH1). The Office of Program Innovation and Demonstration (OPID) directs the development and implementation of demonstration programs and initiatives designed to test the efficacy of new and innovative service delivery models in improving the effectiveness of AoA community-based long-term care and health programs. Promotes the coordination of AoA's innovation and demonstration activities with other national, field and

local programs related to aging. Provides technical assistance to Aging Network partners in utilizing the findings from program demonstrations to inform policy and program development and enhance service delivery and coordination at the Federal, State and local level.

Provides agency-wide leadership on the programmatic functions of AoA's discretionary grant programs. Plans and directs activities authorized under Title IV of the OAA as amended. Conducts activities to support the development of adequate knowledge for improving the circumstances of older people. Develops a knowledge base for policy decisions and program development and coordination through support of a wide range of innovation, demonstration, technical assistance and training activities.

Develops standards, operational models, and best practices on services to the elderly for use by the State and Area Agencies on Aging, Indian Tribal organizations, and local community providers. Develops technical assistance material and in-service training curricula concerning these standards, models, and best practices.

Prepares the planning documents for, and coordinates the development of, annual discretionary grant program announcements. Provides technical input for Congressional and budget presentations related to innovation and demonstration programs. Evaluates innovation, demonstration grant and contract proposals; and recommends approval/disapproval. Monitors progress, gives technical guidance to, and evaluates the performance of grantees and contractors.

Develops standards and identifies successful service and systems development strategies and best practice models for use by the Aging Network. Reviews products developed by AoA grantees, the Aging Network, and other sources regarding information on aging to identify new findings that will be useful to older people and professionals operating in the field of aging. Develops technical assistance material and dissemination strategies for these strategies, models, and best practices, in coordination with the other AoA offices. Determines the relative utility of such products, and in collaboration with the Office of Outreach and Consumer Information, their potential users and the most effective way to disseminate the information.

3. Office of Performance and Evaluation (BH2). The Office of Performance and Evaluation (OPE) implements, oversees and manages AoA's program performance responsibilities, data collection systems, and program evaluation activities, in collaboration with the Center for Program Operations. Develops plans and priorities for evaluation of AoA programs, with subject matter input from appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA, with technical input from other AoA units. Provides technical guidance on evaluation activities conducted as part of AoA's discretionary grants programs.

Implements the requirements of the Government Performance and Results Act of 1993 (GPRA). Interprets AoA goals, priorities, and strategies for consistency with AoA long-range GPRA goals and strategies, and adjusts GPRA goals and strategies accordingly. Provides guidance and technical assistance to AoA organizational units in developing operational plans, particularly in developing measurable objectives and indicators reflecting program and organizational performance. Prepares AoA's annual GPRA plan and report and coordinates with Office of Budget and Finance on the development of the AoA performance budget.

Coordinates AoA activities related to the collection, analysis, and dissemination of national and program data on older individuals. Develops and manages data requirements associated with home and community-based services programs under Titles III, VI, and VII of the OAA. Develops and designs the criteria for collecting, analyzing and disseminating program performance data on State and Area Agencies' implementation of OAA programs, and prepares that data for reporting to Congress and the public. Designs, implements and provides guidance and technical assistance to State and Area Agencies on Aging and service providers on data collection and analysis (Section 202(b)(28)) and on uniform data collection procedures for State Units on Aging (Section 202(b)(29)).

Develops and operates, in coordination with the Office of Information Resources Management, a National Aging Program Information System focused on the information needs of AoA and the National Aging Network to both manage and advocate for the delivery of effective and efficient services to the elderly. Provides liaison with the Federal Task Force on Aging Statistics in support of planning and program requirements. Performs routine and special statistical analyses of data for AoA offices, other Federal and non-Federal organizations, and the general public.

4. Office of Policy Analysis and Development (BE4). The Office of Policy Analysis and Development (OPAD) is responsible for analyzing trends in demographics, service needs, public policy and program development, and translating those trends into new policies and programs in long-term care and health care that assist the elderly to remain in their own homes and communities. OPAD develops and maintains effective relationships with government and private sector entities and their representatives at the Federal, State and local levels to develop a unified policy toward, and promote the aims of the OAA; and oversees the development of more responsive service systems through intergovernmental and private sector initiatives and partnerships to address age-related issues and concerns.

Coordinates the development and implementation of the agency's strategic plan that establishes long and short-range goals, objectives, strategies and action plan for advancing the agency's policy and program agenda. Reviews and coordinates all policy and program development documents and activities to ensure consistency with AoA's strategic plan; and adjusts goals and strategies as appropriate.

Directs intergovernmental activities as it relates to the agency's policy and program development agenda, and develops and maintains effective relationships with other governmental departments and agencies. Plans, negotiates, facilitates and updates, as appropriate, memoranda of understanding with other departments and agencies to promote agreements and cooperative relationships and ventures that address policies and services affecting the aging population. Maintains information on, and pursues collaborative opportunities with, other Federal agencies, non-profit organizations and private corporations that have the potential to contribute to AoA's policy and program development priorities.

Supports the Assistant Secretary for Aging in implementing Section 203(1) of the OAA by coordinating, advising, consulting with and cooperating with the head of each department, agency and instrumentality of the Federal Government proposing or administering programs or services substantially related to the objectives of the OAA. Oversees the consultation process by which agency heads must consult with AoA before establishing programs or services related to the OAA. Plans and

implements the process for the collaboration of all Federal agencies with AoA in the execution by those agencies of programs and services related to the OAA.

Provides technical, program and policy development input on legislative activities and the annual budget development cycle. Participates in Departmental and inter-departmental activities that concern health and long-term care; reviews and comments on Departmental regulations and policies regarding health programs and institutional and non-institutional long-term care services.

Conducts relevant policy research, conducts periodic reviews of needs and resources in the field of aging, and undertakes qualitative and quantitative analyses to develop policy options and recommendations for the Assistant Secretary. Develops policy reports based on the needs and circumstances of older people, their family members and the aging population. Develops and coordinates initiatives with other Federal agencies, national aging organizations and universities to fill gaps in information in the field of aging.

II. Delegations of Authority: All delegations and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further re-delegations.

III. Funds, Personnel and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies and other resources.

Dated: February 22, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–8165 Filed 4–8–10; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5321–N–03]

Notice of Change in Definitions and Modification to Neighborhood Stabilization Program (NSP)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On October 6, 2008, HUD published a notice advising the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and waivers granted under Title III of Division B of the Housing and Economic Recovery Act (HERA) of 2008, which established the NSP. On June 19, 2009, HUD published a bridge notice advising the public of substantive revisions and a number of non-substantive technical corrections to the October 6, 2008, notice, primarily as a result of changes to NSP made by Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") (Pub. L. 111–005, approved February 17, 2009).

Today's notice implements a program change resulting from an amendment to HERA made by the Helping Families Save Their Homes Act of 2009 (Pub. L. 111–22, approved May 20, 2009) (HFSHA), and which change was made retroactive to the date of enactment of HERA—July 30, 2008. This notice also advises of changes to the October 6, 2008, notice's definitions for "Abandoned" and "Foreclosed" property to assist in better targeting NSP assistance for the purchase, rehabilitation, or redevelopment of abandoned and foreclosed properties.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. FAX inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Title III of Division B of HERA (Pub. L. 110–289, approved July 30, 2008) appropriated $3.92 billion for emergency assistance for the redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the grants are to be considered Community Development Block Grant (CDBG) funds. The grant program under Title III is commonly referred to as the Neighborhood Stabilization Program (NSP). HERA authorizes the Secretary to specify alternative requirements to any provision under Title I of the Housing and Community Development Act of 1974 (the HCD Act) except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint), in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting the use of grant funds.

On October 6, 2008 (73 FR 58330), HUD published a notice entitled "Notice of Regulatory Waivers Granted to and Alternative Requirements for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008." This notice advises the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and waivers granted. On June 19, 2009 (74 FR 29223), HUD published a bridge notice which advised the public of substantive revisions and several non-substantive technical corrections to the October 6, 2008 notice, primarily as a result of changes to NSP made by Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–005, approved February 17, 2009) (Recovery Act).

Today's notice advises the public of two definition changes to the October 6, 2008 publication, based on the experiences of grantees in implementing the program and designed to increase the effectiveness of the program and speed its implementation. The effect of these changes will be to broaden the inventory of eligible properties, increase grantee capacity, and to reduce regulatory friction points affecting the speed of the program. NSP grantees may apply the new definitions as of the date of submission of their Substantial Amendment and Action Plan to HUD, regardless of the current status of acquisition, redevelopment or disposition activities already undertaken. Note that NSP assistance may only be provided to eligible activities carried out in compliance with all applicable NSP program requirements, including preparation and submission of an amendment to the initial Substantial Amendment to implement certain program adjustments. Additionally, this notice advises of a program change contained in section 105 of HFSHA, which affects those states receiving the minimum grant of $19.6 million in NSP funding.

II. This Notice—Changes to NSP Notice

HUD has determined that the following definition changes and alternative requirements are necessary to expedite the use of these funds for their required purposes.

A. Definitions of Abandoned and Foreclosed

HUD determined that the definition of "Abandoned" on page 58331 of the NSP

notice is too restrictive such that NSP funds are in some cases prevented from being employed as contemplated by the HERA. HUD has received many comments from grantees and other interested parties that the current definition limits the opportunities to acquire properties in a strategic and timely manner. For example, the requirement that the property has been vacant for at least 90 days leaves out properties abandoned by owners, but where tenants are still in place. This then precludes grantees from the opportunity and ability to assist these properties with NSP funds, which would in fact protect the tenants that may be occupying such properties. This limitation has been determined to be a substantial barrier to preservation of existing affordable housing. Some comments received by HUD pointed out that abandonment predictably occurs when code enforcement in a high risk market is not followed up with a property acquisition strategy, and that abandonment is a function of a weak housing market in which residential units sell for substantially less than their replacement value. To provide grantees with greater flexibility in determining which properties to acquire, and greater opportunity to acquire properties in a strategically timely manner, HUD is amending the definition of "Abandoned" in the notice. HUD's amendments are directed only to identifying program-specific eligibility criteria for using NSP funds to assist abandoned properties. These amendments should not be construed to supersede any state, local or tribal legal proceedings that may govern abandoned properties, as such term may be defined under state, local or tribal law, or any protection rights available to property owners or tenants under Federal, State, local or tribal law.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) (URA) applies to the acquisition of real property for a federally-funded program or project and also when persons are displaced as a direct result of acquisition, rehabilitation or demolition for a federally-funded program or project. Property acquisitions which satisfy the applicable requirements of the URA regulations at 49 CFR 24.101(b)(1)–(5), may be considered voluntary, whereas acquisitions subject to the threat and use of eminent domain are considered involuntary and the acquisitions are subject to the full real property acquisition requirements of 49 CFR part 24, subpart B. Typically tenant-occupants displaced in connection with voluntary acquisitions are eligible for URA relocation assistance, whereas owner-occupants are not. In cases of an involuntary acquisition, both owner-occupants and tenant-occupants are eligible for URA relocation assistance. NSP grantees and subrecipients should ensure their activities are in compliance with all applicable URA acquisition and relocation requirements. NSP funds may be used to provide URA permanent and temporary relocation assistance as provided in 24 CFR 570.201(i). This includes permanent and temporary relocation assistance for eligible persons displaced by projects assisted with NSP funding.

Grantees need to be particularly careful when acquiring properties within the newly expanded definition of abandoned which now includes properties subject to code-enforcement actions. For instance, if a grantee has the power of eminent domain and a governmental subrecipient or contractor of that grantee uses NSP funds to acquire a property with a serious code enforcement deficiency, the grantee will likely need to approach the acquisition as an involuntary acquisition under the URA, subject to the full real property acquisition requirements of 49 CFR part 24 subpart B. For property acquisitions by other NSP-assisted entities, such as a non-governmental subrecipient, private developer, or homebuyer, the grantee is advised to carry out due diligence to ensure that prohibited coercion of the seller is in no way involved in the transaction. For example, a unit of government that has the power of condemnation and code enforcement, and provides funds to a non-profit to purchase properties condemned or deemed uninhabitable by that unit of government may give the property owner the perception that condemnation or eminent domain action might be used coercively to enable a subrecipient to buy the property. Also illustratively, a case in which a city initiates a redevelopment project, selects the developer, controls the developer's activities by contract, commits itself to acquire by eminent domain any property that the developer fails to acquire through negotiation, and provides financing for the acquisitions, may be viewed as jointly "undertaken" by the city and the developer for acquisition and relocation purposes under the URA. The URA regulations at 49 CFR 24.102(h) prohibit agencies from advancing the time of condemnation, deferring negotiations, or condemnation or the deposit of funds with the court, or from taking any other coercive action to induce an agreement on the price to be paid for a property.

According to commenters, the definition of "Foreclosed" on page 58331 is very clear, but not a good match for market conditions in many areas. HUD has received numerous expressions of concern from grantees and other interested parties that the current definition needs to be modified to permit greater flexibility in addressing local market conditions. The definition limits a grantee's ability to intervene strategically when a lender initiates but does not complete foreclosure, or where a default is allowed to linger. Further, many lenders are transferring properties to aggregators or servicers, which then arrange for final disposition. In some of these cases, current policy does not consider the properties to retain their foreclosed status after title is transferred to the aggregator or servicer. (By "intermediary aggregators and servicers" HUD does not mean "investors." An aggregator or servicer will typically limit the resale price to acquisition plus a modest servicing fee; such organizations are not investors seeking to maximize the return on their capital.) For the same reasons that HUD is amending the definition of "Abandoned," it is amending the definition of "Foreclosed." To wait until foreclosure has been completed, as "foreclosed" was originally defined in the NSP notice, only allows the properties to further deteriorate and the neighborhoods in which such properties are located to further suffer from these deteriorating conditions, making redevelopment harder and more time consuming to do. As is the case with the amendments to the definition of "Abandoned," the amendments to "Foreclosed" should not be construed to supersede or affect in any way state, local or tribal laws governing foreclosures or any protection rights available to property owners or tenants under Federal, State, local, or tribal law.

The new definition of foreclosed applies the term "current delinquency status". This indicates the number of days (*e.g.*, 30, 60, 90) the borrower is contractually past due. NSP grantees will use the Mortgage Banker Association (MBA) Delinquency Calculation Method to determine the current delinquency status of a mortgage. Under the MBA method, a loan would be considered delinquent if the payment had not been received by the end of the day immediately preceding the loan's next due date (generally the last day of the month which the payment was due). Using the example above, a loan with a due date of August 1, 2009, with no payment

received by the close of business on August 31, 2009, would have been reported as delinquent in September. From September 1 to September 30, 2009, the mortgage's current delinquency status would be 30 days. On October 1, 2009, the mortgage's current delinquency status would become 60 days.

B. Implementation of Public Law 111–22 for Certain States

Section 105 of HFSHA amends section 2301(c) of HERA (42 U.S.C. 5301 note) to allow those states receiving only the minimum NSP allocation of $19.6 million and that have NSP funds remaining after distributing in accordance with the priority established in section 2301(c)(2) of HERA to distribute those remaining funds to "areas with homeowners at risk of foreclosure or in foreclosure without regard to the percentage of home foreclosures to such areas." Section 105 of Public Law 111–22 affects the following states: Alaska, Arkansas, Delaware, Hawaii, Idaho, Maine, Montana, North Dakota, Nebraska, New Hampshire, New Mexico, Oregon, Puerto Rico, Rhode Island, South Dakota, Utah, Vermont, West Virginia and Wyoming.

States submitted a substantial amendment for NSP to their 2008 Annual Action plan to propose uses for the NSP funds, referred to herein as the "NSP plan". The NSP plan included needs data identifying the geographic areas of greatest need and a narrative describing how the NSP funds would be distributed to those areas of greatest need in accordance with section 2301(c)(2) of HERA. Section 105 of HFSHA now allows states to re-program NSP funds to additional areas with homeowners at risk of foreclosure or in foreclosure without regard to the percentage of home foreclosures in such areas if they have fulfilled the requirements of section 2301(c)(2) of HERA. Eligible states, those that only received $19.6 million in NSP funds, that wish to take advantage of this option, must provide a substantial amendment to their NSP plan. The amendment must contain several elements, including the state's explanation of how it has fulfilled the requirement of section 2301(c)(2), distributing funds in a manner that gives priority to areas with greatest need, as outlined in the NSP plan.

A state may define program terms under the authority of 24 CFR 570.481(a) and will be required to define certain terms if it chooses to submit a substantial amendment. States will be given maximum feasible deference in accordance with 24 CFR 570.480(c) in matters related to the administration of their programs.

This amendment will not be subject to HUD approval, unlike the NSP plan. States that plan to amend their NSP plan must follow the alternative requirements found in section II.B.4.b. of the October 6, 2008, (73 FR 58330) notice as amended by the June 19, 2009, notice (74 FR 29223). The state will submit a copy of the substantial amendment to the HUD field office when the citizen participation is complete. Although the amendment is not subject to approval, HUD will monitor grantees to ensure proper implementation of the substantial amendment pursuant to section 105 of HFSHA.

HUD reminds grantees of the statutory deadline to obligate all NSP funds within 18 months from the date that HUD signed the agreement with the state. This deadline does not change for those eligible states that choose to amend their NSP plan pursuant to this notice. Therefore, if a state plans to amend its NSP plan pursuant to this notice, it is in the state's best interest to develop the amendment as soon as possible.

Except as described in this notice, the October 6, 2008, notice, and the June 19, 2009, notice, the statutory and regulatory provisions governing the Community Development Block Grant (CDBG) program including those at 24 CFR part 570, subpart I, shall continue to apply to the use of these funds. The modification pursuant to section 105 of HFSHA provides for no changes to the NSP eligible uses and corresponding CDBG eligible activities, other targeting requirements (*e.g.* the 25 percent set-aside), timeframes for obligation or expenditure or any other provision not explicitly annotated in this notice. The environmental provisions of 24 CFR part 58 remain in effect and funds cannot be drawn down until there is an approved Request for Release of Funds.

III. NSP Amendments

The substantive revisions made by this notice are as follows. (The **Federal Register** page number identifies where the language to be revised can be found in the October 6, 2008, notice.)

Definition Changes

1. The definition of "Abandoned" on page 58331 is revised to read as follows: "*Abandoned.* A home or residential property is abandoned if either (a) mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or (b) a code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies, or (c) the property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state, local or tribal law or otherwise meets a state definition of an abandoned home or residential property."

2. The definition of "Foreclosed" on page 58331 is revised to read as follows: "*Foreclosed.* A home or residential property has been foreclosed upon if any of the following conditions apply: (a) The property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or (b) the property owner is 90 days or more delinquent on tax payments, or (c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed, or d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP grantee, contractor, subrecipient, developer, or end user."

3. Those states receiving only the minimum NSP allocation of $19.6 million and that have NSP funds remaining after distributing in accordance with the priority established in section 2301(c)(2) of HERA may distribute those remaining funds to "areas with homeowners at risk of foreclosure or in foreclosure without regard to the percentage of home foreclosures to such areas." States that choose to exercise this option must provide a substantial amendment to their NSP Plan.

Implementation of Public Law 111–22: Contents of the Substantial Amendment to the NSP Plan for States

1. General information about "fulfilled requirement of section 2301(c)(2)":

a. Provide the original summary needs data identifying the geographic areas of greatest need in the grantee's jurisdiction submitted in the NSP plan;

b. Define "fulfillment" in the context of section 2301(c)(2);

c. Explain how funds were distributed in a manner that met the requirements of section 2301(c)(2) of HERA, i.e., the state gave priority emphasis and consideration to the areas of greatest need, including those with the greatest percentage of home foreclosures, the highest percentage of homes financed by a subprime mortgage loan, and identified by the state or unit of general local government as likely to face a significant rise in the rate of home

foreclosure. Provide documentation in support of this explanation.

2. General information about "remaining funds":

a. Define "remaining funds";

b. Detail the calculation methodology. The calculation of remaining funds may be performed on an area-by-area basis. In this manner, the state does not need to demonstrate that the requirements of section 2301(c)(2) have been met in all areas before the remaining amounts can be calculated, so long as funds have been programmed to meet the requirements of 2301(c)(2) in all areas;

c. List the dollar amount of remaining funds.

3. Designation of additional area(s):

a. Define "Areas with Homeowners at Risk of Foreclosure or in Foreclosure";

b. Delineate additional area(s) for the receipt of remaining NSP funds; include specific data sources to support that these area(s) contain homeowners at risk of foreclosure or in foreclosure;

c. Describe how the remaining funds will be distributed to additional area(s).

4. Information by activity describing how the state will use the remaining funds, identifying:

a. The eligible use of funds under NSP;

b. the eligible CDBG activity or activities;

c. the area(s) that will be served with the remaining funds;

d. the expected benefit to income-qualified persons or household area(s);

e. appropriate performance measures for the activity (*e.g.* units of housing to be acquired, rehabilitated, or demolished for the income levels represented in DRGR, which are currently 50 percent of area median income and below, 51 to 80 percent, and 81 to 120 percent);

f. the amount of funds budgeted for the activity;

g. the name and location of the entity that will carry out the activity; and

h. the expected start and end dates of the activity.

5. A description of the general terms under which assistance will be provided, including:

a. If the activity includes acquisition of real property, the discount required for acquisition of foreclosed-upon properties;

b. Range of interest rates (if any);

c. Duration or term of assistance;

d. Tenure of beneficiaries (*e.g.,* rental or homeownership); and

e. If the activity produces housing, how the design of the activity will ensure continued affordability; and

f. If the funds used for the activity are to count toward the requirement at section 2301(f)(3)(A)(ii) to provide benefit to low-income persons (earning 50 percent or less of area median income).

6. Information on how to contact grantee program administrators, so that citizens and other interested parties know who to contact for additional information.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: April 1, 2010.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–8131 Filed 4–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–13]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: April 9, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 1, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–7765 Filed 4–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCY: Department of the Interior, Office of the Assistant Secretary—Water and Science.

ACTION: Notice of Intent to prepare an Environmental Assessment for the proposed conversion of Central Utah Project water from irrigation to municipal and industrial use and possible expansion of delivery area in Wasatch County, Utah.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior and the Central Utah Water Conservancy District (District) are evaluating the impacts of a proposed conversion of up to 12,100 acre feet of Central Utah Project (CUP) Bonneville Unit water, delivered to Wasatch County, Utah, from irrigation to municipal and industrial (M&I) use. The proposed water conversion could be implemented incrementally, and will involve up to 12,100 acre-feet of irrigation water that has been made available under Block Notice 1A of the CUP. The delivery area could be expanded to include additional land in Wasatch County.

The Bonneville Unit of the CUP was authorized to develop a portion of central Utah's water resources. Under the authority of the Central Utah Project Completion Act (Pub. L. 102–575), the Secretary of the Interior oversees implementation of the CUP and has authority to convert CUP water from irrigation to M&I use in accordance with the provisions of the 1965 Repayment

Contract between the District and the United States. This water was originally developed for irrigation use in Wasatch County, Utah, under the Bonneville Unit of the CUP. Suburban development in the county has resulted in agricultural land being taken out of production, annexed into the cities, and developed into residential areas. These past and proposed changes in land use in Wasatch County, Utah, have resulted in a request made by the Wasatch County Special Service Area No. 1 to initiate a process of conversion from irrigation to M&I water use, and to expand the area to be eligible to receive CUP M&I water.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by contacting Mr. Lynn Hansen, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606, by calling (801) 379–1238, or e-mail at *lhansen@usbr.gov.*

Dated: April 5, 2010.

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

[FR Doc. 2010–8105 Filed 4–8–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N268; 40120–1113–0000–C4]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of 15 Caribbean Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews of 15 species under the Endangered Species Act of 1973, as amended (Act). We conduct these reviews to ensure that the classification of species as threatened or endangered on the Lists of Endangered and Threatened Wildlife and Plants is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct this review, we must receive your comments or information on or before June 8, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, at address above or *phone:* 787/851–7297, ext. 231; *e-mail: marelisa_rivera@fws.gov.*

SUPPLEMENTARY INFORMATION: Under the Act (16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). The List is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species.*

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. If we consider delisting a species, we must support the action by the best scientific and commercial data available. We must consider if these data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. We make amendments to the List through final rules published in the **Federal Register.**

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of 15 species currently listed as endangered: Bariaco (*Trichilia triacantha*), *Calyptranthes thomasiana* (no common name), capá rosa (*Callicarpa ampla*), Cook's holly (*Ilex cookii*), *Chamaecrista glandulosa* var. *mirabilis* (no common name), chupacallos (*Pleodendron macranthum*), Vahl's boxwood or diablito de tres cuernos (*Buxus vahlii*), erubia (*Solanum drymophilum*), *Myrcia paganii* (no common name), nogal (*Juglans jamaicensis*), palo de nigua (*Cornutia obovata*), palo de Ramón (*Banara vanderbiltii*), uvillo (*Eugenia haematocarpa*), Puerto Rican nightjar or guabairo (*Caprimulgus noctitherus*), and white-necked crow (*Corvus leucognaphalus*).

What Information Do We Consider in a 5-Year Review?

A 5-year review considers the best scientific and commercial data that has become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading "How Do We Determine Whether a Species is Endangered or Threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Definitions

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

What Could Happen as a Result of This Review?

If we find that there is new information concerning any of these 15 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species

from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then these species will remain on the List under their current status.

Request for New Information

To do any of the following, contact Marelisa Rivera at the address or phone number provided under **ADDRESSES**:

(a) To get more information on a species,

(b) To submit information on a species, or

(c) To review information we receive, which will be available for public inspection by appointment, during normal business hours, at the listed address.

We request any new information concerning the status of these 15 species. See "What Information Do We Consider in a 5-Year Review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 22, 2009.

Patrick Leonard,

Acting Regional Director, Southeast Region.

Editorial Note: This document was received in the Office of the Federal Register on April 6, 2010.

[FR Doc. 2010–8102 Filed 4–8–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N002; 40120–1113–0000–C4]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of 10 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews of 10 species under the Endangered Species Act of 1973, as amended (Act). We conduct these reviews to ensure that the classification of species as threatened or endangered on the Lists of Endangered and Threatened Wildlife and Plants is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct these reviews, we must receive your comments or information on or before June 8, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review information we receive on these species, *see* "Request for New Information."

FOR FURTHER INFORMATION CONTACT: For species-specific information, *see* "Request for New Information."

SUPPLEMENTARY INFORMATION:

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). The List is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species.* Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. If we consider delisting a species, we must support the action by the best scientific and commercial data available. We must consider if these data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. We make amendments to the List through final rules published in the **Federal Register**.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under our active review. This notice announces our active review of seven species that are currently listed as endangered: Mississippi sandhill crane (*Grus canadensis pulla*), Alabama cavefish (*Speoplatyrhinus poulsoni*), Alabama lampmussel (*Lampsilis virescens*), pale lilliput (*Toxolasma cylindrellus*), pondberry (*Lindera melissifolia*), green pitcher-plant (*Sarracenia oreophila*), and Louisiana quillwort (*Isoetes louisianensis*). This notice also announces our active review of three species that are currently listed as threatened: Gopher tortoise (*Gopherus polyphemus*), yellow-blotched map turtle (*Graptemys flavimaculata*), and Mohr's Barbara button (*Marshalli mohrii*).

What Information Do We Consider in a 5-year Review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (*see* five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Definitions

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

What Could Happen as a Result of This Review?

If we find that there is new information concerning any of these 10 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Request for New Information

To do any of the following, contact the person associated with the species you are interested in below:

(a) To get more information on a species,

(b) To submit information on a species, or

(c) To review information we receive, which will be available for public inspection by appointment, during normal business hours, at the listed addresses.

- Alabama lampmussel and pale liliput: Daphne Field Office, U.S. Fish and Wildlife Service, 1208–B Main St., Daphne, AL 36526, fax 251/441–6222. For information on these mussels, contact Jeff Powell at the Daphne Field Office (phone 251/441–5181, e-mail *jeff_powell@fws.gov*).
- For the remaining 8 species: Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Ste. A, Jackson, MS 39213, fax 601/965–4340. For information on the Alabama cavefish, contact Daniel Drennen at the Jackson Field Office (phone 601/321–1127, e-mail *daniel_drennen@fws.gov*). For the gopher tortoise, contact Shauna Ginger at the Jackson Field Office (phone 601/321–1130, e-mail *shauna_ginger@fws.gov*). For information on the Mississippi sandhill crane and yellow-blotched map turtle, contact Linda LaClaire at the Jackson Field Office (phone 601/321–1126, e-mail *linda_laclaire@fws.gov*). For information on pondberry, green pitcher- plant, Mohr's Barbara button, and Louisiana quillwort, contact Cary Norquist at the Jackson Field Office (phone 601/321–1128, e-mail *cary_norquist@fws.gov*).

We request any new information concerning the status of any of these 10 species. See "What information do we consider in a 5-year review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2009.

Patrick Leonard,

Acting Regional Director, Southeast Region.

[FR Doc. 2010–8103 Filed 4–8–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; North Carolina and Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management—Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: These surveys were requested by the Bureau of Indian Affairs.

The lands surveyed are:

Jackson County, North Carolina

The plat of survey represents the dependent resurvey of a portion of the Qualla boundary and the southern boundary of the Cathcart Tract, in Jackson County, in the State of North Carolina, and was accepted March 30, 2010.

Fifth Principal Meridian, Minnesota

T. 145 N., R 38 W.

The plat of survey represents the dependent resurvey of a portion of the West boundary and a portion of the subdivisional lines, the survey of the subdivision of Sections 8, 9, 10, 18, and 19, the survey of four tracts in Section 8, and the reestablishment of a portion of the record meander lines in Section 19, in Township 145 North, Range 38 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted March 23, 2010.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a 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 a plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: April 5, 2010.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2010–8106 Filed 4–8–10; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP00000.L10200000.PI0000; Hag10–0214]

Meeting Notice for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the John Day/Snake Resource Advisory Council.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (JDSRAC) will meet as indicated below:

DATES: The JDSRAC meeting will begin 8 a.m. PST on April 30, 2010.

ADDRESSES: The JDSRAC will meet at the Oxford Suites Pendleton, 2400 SW. Court Place, Pendleton, Oregon 97801.

SUPPLEMENTARY INFORMATION: The meeting agenda includes Subcommittee Reports, a Blue Mountain Plan Revision Update, an Energy Overview, a presentation on Implications to Land Management from Sagegrouse Decisions, and other matters as may reasonably come before the Council. The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 1 p.m. on April 30, 2010. Those who verbally address the JDSRAC are asked to provide a *written* statement of their comments or presentation. Unless otherwise approved by the JDSRAC Chair, the public comment period will last no longer than 15 minutes, and each speaker may address the JDSRAC for a maximum of five minutes. If reasonable accommodation is required, please contact the BLM's Prineville District at (541) 416–6889 as soon as possible.

FOR FURTHER INFORMATION CONTACT: Christina Lilienthal, Public Affairs Specialist, 3050 NE. Third, Prineville, OR 97754, (541) 416–6889 or *e-mail: christina_lilienthal@blm.gov*.

Dated: April 5, 2010.

Rachel A. Carver,

Administrative Officer, Prineville District Office.

[FR Doc. 2010–8107 Filed 4–8–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N043; 80221–1113–0000–C2]

Paiute Cutthroat Trout Restoration Project, Alpine County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability: final environmental impact statement.

SUMMARY: This notice announces the availability of the Paiute Cutthroat Trout Restoration Project Final Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for public review. We, the Fish and Wildlife Service (Service), along with the Humboldt-Toiyabe National Forest (Cooperating Agency) and the California Department of Fish and Game (CDFG, California Environmental Quality Act lead agency) (collectively, agencies), are proposing to restore Paiute cutthroat trout to the species historical range within the Silver King Creek watershed, Alpine County, California. To accomplish this, the agencies must first eradicate the non-native and hybrid trout which currently occupy the habitat. We are publishing this notice to inform the public of the proposed action and to make available for review the Final EIS/EIR, which includes responses to public comments received on the March 2009, Draft EIS/EIR.

DATES: A Record of Decision will be signed no sooner than 30 days after the publication of the Environmental Protection Agency notice. We must receive comments by 5 p.m. on May 10, 2010.

ADDRESSES: Submit comments to Robert D. Williams, State Supervisor, by U.S. mail at Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; by telephone at (775) 861–6300 or by fax at (775) 861–6301.

FOR FURTHER INFORMATION CONTACT: Chad Mellison, Fish and Wildlife Biologist, at the address or telephone or fax numbers above.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may download copies of the EIS from the Nevada Fish and Wildlife Office Web site at: *http://www.fws.gov/nevada.* Alternatively, you may contact us by telephone or visit during regular business hours (*see* **FOR FURTHER INFORMATION CONTACT**).

In addition, copies of all documents are available at the Markleeville Library and Archives, 270 Laramie Street, P.O. Box 187, Markleeville, CA, 96120; (530) 694–2120.

Background

The Paiute cutthroat trout was listed as endangered by the Service under the Endangered Species Preservation Act of 1966 on March 11, 1967 (Service 1967) and reclassified to threatened under the Endangered Species Act of 1973 on July 16, 1975 (Service 1975). Silver King Creek, from Llewellyn Falls downstream to Silver King Canyon, and its associated tributaries in Alpine County, California, comprise the native historical range of the Paiute cutthroat trout (*Oncorhynchus clarkii seleniris*) (Service 2004).

The fish now present in the Silver King Creek watershed between Llewellyn Falls and Silver King Canyon are a genetic mixture of introduced rainbow trout (*O. mykiss*), Lahontan cutthroat trout (*O. c. henshawi*), golden trout (*O. aquabonita* ssp.), and Paiute cutthroat trout. Hybridization with nonnative trout species is the primary threat to Paiute cutthroat trout within its historical range (Service 2004). Fishery restoration efforts involving Paiute cutthroat trout span from 1950 to the present and include prior removals of nonnative and hybridized fish, as well as establishing and maintaining introduced populations of nonhybridized Paiute cutthroat trout. Populations of Paiute cutthroat trout have been established in several California streams outside the Silver King Creek watershed, including the North Fork of Cottonwood Creek and Cabin Creek in the Inyo National Forest (Mono County), Sharktooth Creek (Fresno County), and Stairway Creek (Madera County) both on the Sierra National Forest.

Paiute cutthroat trout are currently found in Silver King Creek upstream of Llewellyn Falls, where a previously-introduced population was restored by CDFG in the early 1990's and in other tributaries where populations have been established within the watershed (*e.g.,* Four Mile Creek, Fly Valley Creek, Coyote Creek and Corral Valley Creek).

The project would implement the first and second recovery actions listed in the Paiute Cutthroat Trout Revised Recovery Plan (Service 2004) which lists actions to restore, recover, and ultimately delist the species. The objective of the proposed project is to return Paiute cutthroat trout back to its historical range and establish them as the only salmonid fish species in Silver King Creek to prevent hybridization with other trout. This is an important and necessary step in preventing Paiute cutthroat trout from going extinct and

also in conserving the species and restoring it to a level that would allow it to be removed from the Federal threatened species list. Under current conditions, easy public access between stream reaches downstream and upstream of Llewellyn Falls may result in a future unauthorized transplant of nonnative and/or hybridized fish to areas above the falls.

Under the proposed project, the agencies would: (1) Use chemical treatment (rotenone) to eradicate nonnative trout from Silver King Creek and its tributaries between Llewellyn Falls and Silver King Canyon; (2) Neutralize the rotenone downstream of Silver King Canyon to the 30-minute travel time mark near the confluence with Snodgrass Creek using potassium permanganate; and (3) Restock the project area with Paiute cutthroat trout from established donor streams in the upper Silver King Creek watershed (*i.e.,* Fly Valley, Four Mile, Silver King Creek, or possibly Coyote Creek).

The proposed stocking of Paiute cutthroat trout will expand the current population size and distribution downstream from Llewellyn Falls to a series of six impassible fish barriers in Silver King Canyon and associated tributaries. These barriers, the two highest being 8 and 10 feet high, would prevent any reinvasion of nonnative trout from areas downstream of the project area and greatly reduce the likelihood of and impacts from any future illegal nonnative species introduction. By expanding the populations and range of the species, the project would also increase the probability of long-term viability and reduce threats from genetic bottlenecking and stochastic events.

The proposed project also includes pre-treatment biological surveys and monitoring for amphibians and aquatic macroinvertebrates; placement of signs to inform the public; water quality monitoring (during and post treatment); and post-treatment biological monitoring. The Agencies would apply rotenone to the project area in the summers of 2010 and 2011 (and 2012 if needed). Additional treatments would be scheduled as necessary to ensure complete removal of nonnative trout from the project area.

National Environmental Policy Act Compliance

The analysis provided in the Final EIR/EIS is intended to accomplish the following: Inform the public of the agencies' proposed action and alternatives; address public comments received on the Draft EIS/EIR; disclose the direct, indirect, and cumulative environmental effects of our proposed action and alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action and alternatives. Additionally, the agencies responded to 21 individual comment letters on the Draft EIS/EIR. A response to each comment received in these letters has been included in the Final EIS/EIR (Appendix I). Additionally, the agencies received over 500 support letters for the project.

Public Involvement

The agencies issued a notice of intent to prepare an EIS/EIR for the proposed project, on June 2, 2006 (71 FR 32125) and a notice of availability of the Draft EIS/EIR for the proposed project on March 20, 2009 (74 FR 11965). The Draft EIS/EIR analyzed the potential environmental impacts that may result from the proposed action and alternatives.

Public Review

Copies of the final EIS are available for review (*see* Availability of Documents). Any comments received will become part of the administrative record and may be available to the public. Before submitting comments that include your address, phone number, e-mail address, or other personal identifying information, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The final EIS includes all comments we received on the draft EIS, and our responses to those comments. No decision will be made on the proposed action until at least 30 days after the Environmental Protection Agency's publication of their notice in the **Federal Register**. After the 30-day waiting period, we will complete a Record of Decision that announces the action that will be implemented and discusses all factors leading to the decision.

This notice is provided under regulations for implementing NEPA, as amended (40 CFR 1506.6).

Dated: April 1, 2010.

Ken McDermond,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2010–7952 Filed 4–8–10; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–650]

In the Matter of Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same; Notice of Commission Issuance of a General Exclusion Order, a Limited Exclusion Order, and a Remand Order; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of 19 U.S.C. 1337 by Hanjiang Fei Yu Electronics Equipment Factory of China; Zhongguang Electronics of China; Yangzhou Zhongguang Electronics Co. of China; and Yangzhou Zhongguang Foreign Trade Co. Ltd. of China (collectively, "defaulting respondents") with respect to U.S. Patent Nos. 6,558,194 ("the '194 patent") and D519,076 ("the '076 patent") in the above-captioned investigation. The Commission has also determined that neither respondents Fu-Ching Technical Industry Co., Ltd. of Taiwan ("Fu-Ching"), Gem Electronics, Inc. of Windsor, Connecticut ("Gem") (collectively, "active respondents") nor the defaulting respondents have violated section 337 in connection with U.S. Patent No. 5,470,257 ("the '257 patent"). The Commission has determined to issue a general exclusion order and a limited exclusion order. The Commission has also determined to issue a remand order remanding the portion of the investigation relating to U.S. Patent No. D440,539 ("the '539 patent") to the administrative law judge ("ALJ") for further proceedings. The Commission has determined to extend the target date by 60 days until May 26, 2010.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 30, 2008, based on a complaint filed by John Mezzalingua Associates, Inc. d/b/a PPC, Inc. of East Syracuse, New York ("PPC"). 73 FR 31145 (May 30, 2008). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coaxial cable connectors and components thereof and products containing the same by reason of infringement of the '257, '539, '194, and '076 patents. The complaint named eight respondents. After institution, two respondents were terminated from the investigation based on consent orders, and the following four respondents were found in default: Hanjiang Fei Yu Electronics Equipment Factory of China; Zhongguang Electronics of China; Yangzhou Zhongguang Electronics Co. of China; and Yangzhou Zhongguang Foreign Trade Co. Ltd. of China. The only respondents actively remaining in this investigation are Fu-Ching and Gem.

On October 13, 2009, the ALJ issued his final initial determination ("ID") finding, based on substantial, reliable, and probative evidence, that the defaulting respondents violated section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain coaxial cable connectors and components thereof and products containing the same by reason of infringement of the '257, '539, '076, and '194 patents. The ALJ found that the active respondents have not violated section 337. Based upon petitions for review filed by PPC and the Commission Investigative Attorney, the Commission, on December 14, 2009, determined to review (1) the ALJ's findings and conclusions relating to whether a violation of section 337 has occurred with respect to the '257 patent, including the issues of claim construction, infringement, validity, and domestic industry and (2) the ALJ's finding that PPC has met the domestic industry requirement for the '539 patent.

In its review notice, the Commission asked several questions regarding the issues on review, and invited the public to comment on the domestic industry requirement under section 337(a)(3)(C), 19 U.S.C. 1337(a)(3)(C). On January 13, 2010, the parties filed opening submissions addressing the issues on review as well as remedy, public interest, and bonding, and on January 27, 2010, the parties filed response submissions. Several non-parties also filed submissions addressing the questions regarding domestic industry in the Commission's review notice.

On January 29, 2010, the law firm of Covington and Burling LLP filed, on behalf of several non-parties, a motion for leave to correct a reply submission, which it had timely filed on January 27, 2010. No one opposed this motion. The Commission has determined to grant this motion.

Having examined the record of this investigation, including the ALJ's final ID and all the written submissions, the Commission has determined to vacate in part the ALJ's finding that complainant PPC established a domestic industry for the '539 patent and to issue an order remanding the portion of the investigation relating to the '539 patent to the ALJ for further proceedings. The Commission has also determined to modify the ALJ's constructions of "fastener means" and "engagement means" in the '257 patent and consequently reverse the ALJ's finding that complainant PPC established a domestic industry for the '257 patent and his finding that a violation has occurred with respect to the '257 patent. The Commission has determined that the defaulting respondents violated section 337 by reason of infringement of the '076 and '194 patents. The Commission has determined that the active respondents, Fu-Ching and Gem, did not violate section 337.

The Commission has determined that the appropriate form of relief is a limited exclusion order and a general exclusion order. The limited exclusion order prohibits the unlicensed entry of coaxial cable connectors and components thereof and products containing the same that infringe the claim of the '076 design patent and are manufactured abroad by or on behalf of, or imported by or on behalf of, any of the defaulting respondents. The general exclusion order prohibits the unlicensed entry of coaxial cable connectors and components thereof and products containing the same that infringe claim 1 and/or 2 of the '194 patent.

The Commission further determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the limited exclusion order and the general exclusion order. Finally, the Commission determined that the amount of bond during the Presidential review period (19 U.S.C. 1337(j)) shall be in the amount of thirteen (13) cents per coaxial connector of the defaulting respondents that is subject to the limited exclusion order or the general exclusion order. No bond is required for any other coaxial cable connector or component thereof or product containing the same covered by the general exclusion order. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

Finally, the Commission has determined to extend the target date from March 26, 2010, to May 26, 2010, to allow the ALJ time to consider the Commission's remand instructions. The Commission has instructed the ALJ to make his determination on remand at the earliest practicable time, and to extend the target date of the above-captioned investigation as he deems necessary to accommodate the remand proceedings.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–50).

By order of the Commission.

Issued: March 31, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–8044 Filed 4–8–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Third Review)]

Natural Bristle Paint Brushes From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on natural bristle paint brushes from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to

continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. 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:* February 5, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On February 5, 2010, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (74 FR 56666, November 2, 2009) was adequate and that the respondent interested party group response was inadequate. The Commission also found that other circumstances warranted conducting a full review.[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.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 5, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–8045 Filed 4–8–10; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioners Charlotte R. Lane, Irving A. Williamson, and Dean A. Pinkert found that no other circumstances warranted conducting a full review and voted for an expedited review.

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–007]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 14, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. *Telephone:* (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–462 and 731–TA–1156–1158 (Final)(Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 26, 2010.)
5. Outstanding action jackets:

(1) Document No. GC–10–028 concerning Inv. No. 337–TA–644 (Certain Composite Wear Components and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier announcement of this meeting was not possible.

Issued: April 6, 2010.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–8199 Filed 4–7–10; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Review)]

Ironing Tables and Certain Parts Thereof From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

DATES: *Effective Date:* April 5, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), 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: On November 16, 2009, the Commission established a schedule for the conduct of the five-year review of the subject antidumping duty order (74 FR 62593, November 30, 2009). As stated in that schedule, the Commission will hold a hearing in connection with the review on April 13, 2010. However, because of a scheduling conflict, the hearing will begin at 11 a.m.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 5, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–8043 Filed 4–8–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Final Environmental Impact Statement, Flood Control Improvements and Partial Levee Relocation, United States Section, International Boundary and Water Commission (USIBWC) Presidio Flood Control Project (FCP), Presidio, TX

AGENCY: United States Section, International Boundary and Water Commission.

ACTION: Notice of Availability for the Record of Decision (ROD).

SUMMARY: This notice is provided in accordance with 40 Code of Federal Regulations (CFR) parts 1500–1508 of the National Environmental Policy Act (NEPA), and USIBWC procedures for implementing NEPA. The USIBWC

anticipates the need to improve existing levees in the Presidio FCP or to relocate portions of the Presidio FCP levees. An Environmental Impact Statement (EIS) was prepared to evaluate potential consequences of each action alternative in reference to flood control improvements. Following the evaluation of each alternative in the EIS, the USIBWC selected Alternative 2 (rehabilitation of existing levee to provide 25-year flood protection) as the preferred alternative, and will use the ETS as a guide in developing construction plans.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Acting Division Chief, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–l00, El Paso, Texas 79902 or *e-mail: daniel.borunda@ibwc.gov*.

SUPPLEMENTARY INFORMATION: The Presidio FCP lies within the Presidio-Ojinaga Valley, in southern Presidio County, Texas. It extends approximately 13.1 river miles along the Rio Grande Texas-Mexico border. The length of the levee system in the United States (north levee of the Presidio FCP) is approximately 15.3 miles, and includes the downstream section of Cibolo Creek, a tributary of the Rio Grande north of the City of Presidio.

During September 2008, the Presidio FCP experienced severe flooding conditions due to water releases from the Luis Leon Reservoir on Rio Conchos in Mexico. The flooding caused substantial damage to the Presidio FCP, including levee breaches, overtopping, piping/sand boils, under-seepage, and severe surface and slope erosion. The flooding also potentially compromised the integrity of the levee foundation within several levee segments, primarily at locations of old river meanders. Emergency responses during the flooding event included filling over 25,000 sand bags and placing the bags on the existing levee to add support, and using Department of Defense helicopters to fill bridge openings with larger sand bags in existing railroad right-of-ways to create secondary levees. The sandbags and secondary levees prevented the City of Presidio from experiencing more extensive flooding.

In response to the September 2008 flooding damage, the USIBWC developed engineering alternatives for long-term improvement of the Presidio FCP flood containment capacity. The EIS evaluates a No Action Alternative and six Action Alternatives for levee rehabilitation or relocation that would allow USIBWC to minimize potential environmental impacts and fulfill the project goal of flood protection. A Draft EIS was released for a 45-day public review period on November 24, 2009. Oral comments were also received from during a public hearing held in the City of Presidio, Texas on December 10, 2009. The Environmental Protection Agency Notice of Availability of the Final PEIS was published in the **Federal Register** on February 26, 2010 for a 30-day wait period.

Finding: Based on engineering, economic, and environmental considerations, the USIBWC has selected Alternative 2 (repair and raise the levee to provide 25-year flood protection) as the preferred option for implementation. Because of the damage to the existing levee during the September 2008 flooding (including severe erosion, levee breaches, and levee under-seepage), the existing levee is insufficient to contain a 25-year design flood. Therefore, under Alternative 2, the existing levee would be repaired, and sections of the existing levee would be raised, as needed, to provide the 25-year design flood protection. This would improve the functionality of the existing levee and provide protection to the City of Presidio and adjacent agricultural areas from a 25-year design flood.

Availability: Copies of the Record of Decision may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Home Page at: *http://www.ibwc.gov*.

Dated: March 31, 2010.

Steven M. Fitten,

General Counsel.

[FR Doc. 2010–7911 Filed 4–8–10; 8:45 am]

BILLING CODE 7010–01–M

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that on March 31, 2010, two proposed Consent Decrees were lodged. *United States et al.* v. *Shell Chemical LP,* Civil Action No. 4:10–cv–01042, was lodged with the United States District Court for the Southern District of Texas. *United States* v. *Shell Chemical Yabucoa, Inc.,* Civil Action No. 3:10–cv–1268, was lodged with the United States District Court for the District of Puerto Rico.

The Consent Decrees in these Clean Air Act enforcement actions against Shell Chemical LP and Shell Chemical Yabucoa, Inc. (collectively "Shell") resolve allegations by the Environmental Protection Agency, asserted in complaints filed together with the Consent Decrees, under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged environmental violations at Shell Chemical LP's petroleum refineries in Saraland, Alabama and St. Rose, Louisiana, and at Shell Chemical Yabucoa, Inc.'s petroleum refinery in Yabucoa, Puerto Rico. The proposed Consent Decree in the Shell Chemical LP matter also resolves separate but related state law claims brought by co-plaintiffs Alabama and Louisiana.

These are two of numerous national settlements reached as part of the EPA's Clean Air Act Petroleum Refinery Initiative. Consistent with the objectives of EPA's national initiative, in addition to the payment of civil penalties, the settlements require Shell to perform injunctive relief to reduce emissions of nitrogen oxides, sulfur dioxide, volatile organic compounds, and benzene.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matters as *United States et al.* v. *Shell Chemical LP,* DOJ Ref. No. 90–5–2–1–08703 and/or *United States* v. *Shell Chemical Yabucoa, Inc.,* DOJ. Ref. No. 90–5–2–1–08703/1.

Both proposed Consent Decrees may be examined at the following Regional Offices of the United States Environmental Protection Agency: Region 2, 290 Broadway, New York, New York 10007–1866; Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960; and Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. The Consent Decree addressing Shell Chemical Yabucoa, Inc.'s facility in Yabucoa, Puerto Rico may also be examined at the Office of the United States Attorney, Torre Chardon, Suite 1201, 350 Carlos Chardon Avenue, San Juan, Puerto Rico 00918.

During the public comment period, the proposed agreements may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the proposed agreements 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 from the Consent Decree Library a copy of the consent decree for *United States et al.* v. *Shell Chemical LP,* Civil Action No. 4:10–cv–01042 (S.D. Tx), please enclose a check in the amount of $29.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting from the Consent Decree Library a copy of the consent decree for *United States* v. *Shell Chemical Yabucoa, Inc.,* Civil Action No. 3:10–cv–1268, please enclose a check in the amount of $15.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–8086 Filed 4–8–10; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–042)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Wednesday, April 28, 2010, 8 a.m.–5 p.m. CDT; Thursday, April 29, 2010, 8 a.m.–3 p.m. CDT

ADDRESSES: NASA Johnson Space Center, Gilruth Conference Center, Lonestar Room, 2101 NASA Parkway, Houston, TX 77508.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, 202/358–1148.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include reports from the NAC Committees:

—Aeronautics
—Audit, Finance and Analysis
—Commercial Space
—Education and Public Outreach
—Exploration
—Information Technology Infrastructure
—Science
—Space Operations
—Technology and Innovation

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Please e-mail Ms. Marla King at *marla.k.king@nasa.gov* if you plan to attend.

Dated: April 6, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–8132 Filed 4–8–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation—Applicant Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by June 8, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: "Antarctic Conservation Act Application Permit Form."

OMB Approval Number: 3145–0034.

Expiration Date of Approval: July 31, 2010.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The current Antarctic Conservation Act Application Permit Form (NSF 1078) has been in use for several years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of object to be taken (plant, native mammal, or native bird.

Use of the Information

The purpose of the regulations (45 CFR 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

Burden on the Public: The Foundation estimates about 25 responses annually at 45 minutes per response; this computes to approximately 11.25 hours annually.

Dated: April 6, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–8136 Filed 4–8–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at Brandeis University by NSF Division of Materials Research (DMR) #1203.

Date and Time: Thursday, April 29, 2010; 8:30 a.m.–5 p.m.

Place: Brandeis University, Waltham, MA.
Type of Meeting: Part-open.
Contact Person: Thomas Rieker, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.
Purpose of Meeting: To provide advice and recommendations concerning progress of the MRSEC at Brandeis University.
Agenda: Thursday April 29, 2010:
8:30 a.m.–9:30 a.m. Closed—Executive Session
9:30 a.m.– 3:30 p.m. Open—Review of Brandeis Univ MRSEC
3:30 p.m.–5:00 p.m. Closed—Executive Session
Reason For Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–8098 Filed 4–8–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Nanoscale Science and Engineering Center (NSEC) at the University of Wisconsin, Madison, WI (DMR) #1203.
Dates & Times:
Sunday, May 9, 2010; 5:45 p.m.–8:30 p.m.
Monday, May 10, 2010; 7:30 a.m.–9 p.m.
Tuesday, May 11, 2010; 7:45 a.m.–4 p.m.
Place: University of Wisconsin, Madison, WI.
Type of Meeting: Part-open.
Contact Person: Dr. Thomas Rieker, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.
Purpose of Meeting: To provide advice and recommendations concerning further support of the NSEC at the University of Wisconsin (UW), Madison, WI.

Agenda

Sunday, May 9, 2010

5:45 p.m.–6:45 p.m.: Closed—Executive session
6:45 p.m.–8:30 p.m.: Open—Review of the NSEC at UW

Monday, May 10, 2010

7:30 a.m.–4:30 p.m.: Open—Review of the NSEC at UW
4:30 p.m.–6:15 p.m.: Closed—Executive session
6:45 p.m.–9 p.m.: Closed—Dinner

Tuesday, May 11, 2010

7:45 a.m.–9 a.m.: Closed—Executive session
9 a.m.–10:15 a.m.: Open—Review of the NSEC at UW
10:15 a.m.–4 p.m.: Closed—Executive Session, Draft and Review Report

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–8099 Filed 4–8–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0148]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–8036, "Personnel Monitoring Device—Direct-Reading Pocket Dosimeters."

FOR FURTHER INFORMATION CONTACT: Harriet Karagiannis, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 251–7477 or e-mail *Harriet.Karagiannis@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Personnel Monitoring Device—Direct-Reading Pocket Dosimeters," is temporarily identified by its task number, DG–8036, which should be mentioned in all related correspondence. DG–8036 is proposed Revision 1 of Regulatory Guide 8.4, dated February 1973.

This guide provides guidance acceptable to NRC staff on the use of direct-reading pocket dosimeters; it includes specific performance standards for personnel monitoring but not for area monitoring. Although the previous version of this guide included guidance on indirect-reading pocket dosimeters, this guide excludes such dosimeters because they are essentially no longer used.

II. Further Information

The NRC staff is soliciting comments on DG–8036. Comments may be accompanied by relevant information or supporting data and should mention DG–8036 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Comments would be most helpful if received by June 8, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–148 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. 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.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search

for documents filed under Docket ID NRC–2010–0148. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into 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 NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–8036 is available electronically under ADAMS Accession Number ML093410077. In addition, electronic copies of DG–8036 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.*

Federal Rulemaking Web Site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0148.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 1st day of April, 2010.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–8112 Filed 4–8–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0147; Dockets 72–1030, 50–335 and 50–389]

Florida Power and Light, St. Lucie Units 1 and 2; Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of an Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: B. Jennifer Davis, Senior Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* (301) 492–3371; *Fax number:* (301) 492–3342; *e-mail: bjennifer.davis@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to Florida Power and Light (FPL or licensee) pursuant to 10 CFR 72.7 from specific provisions of 10 CFR 72.48(c)(1)(ii)(B), 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214. FPL submitted its exemption request by letter dated January 12, 2010. FPL wants to load spent nuclear fuel into Transnuclear, Inc. (TN) NUHOMS® HD Storage System (HD–32PTH) dry storage casks, under the proposed Certificate of Compliance No. 1030 (CoC or Certificate) Amendment No. 1. The spent fuel, once loaded into the casks, would be stored under FPL's general license in an Independent Spent Fuel Storage Installation (ISFSI) associated with the operation of FPL's nuclear power reactors, St. Lucie Units 1 and 2, located in St. Lucie County, Florida. FPL is requesting an exemption to use Amendment 1 to the NUHOMS® HD Storage System before Amendment 1 is final.

Environmental Assessment (EA)

Identification of Proposed Action: The CoC is the NRC approved design for each dry storage cask system. The proposed action would exempt FPL from the requirements of 10 CFR 72.48(c)(1)(ii)(B), 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and, 72.214, and enable FPL to use the TN NUHOMS® HD CoC 1030 Amendment 1 at St. Lucie Unit 1 and Unit 2. These regulations specifically require storage of spent nuclear fuel under a general license in dry storage casks approved under the provisions of 10 CFR part 72, and compliance with the terms and conditions set forth in the CoC for each dry spent fuel storage cask used by an ISFSI general licensee.

The TN NUHOMS® HD CoC provides requirements, conditions and operating limits in Attachment A, Technical Specifications. Amendment 1 proposes a change to the NUHOMS® HD system to include the addition of Combustion Engineering (CE) 16 x 16 fuel assemblies as approved contents, the addition of non-fuel assembly hardware as approved contents, and the addition of requirements to qualify metal matrix composite (MMC) neutron absorbers with integral aluminum cladding, along with some other minor changes. Technical staff in the Division of Spent Fuel Storage and Transportation (SFST) have completed their review of Amendment 1, and the preliminary Safety Evaluation Report (SER), draft CoC and associated draft Technical Specifications (TS) have been submitted to the NRC's rulemaking group. The preliminary SER, draft CoC and draft TS are expected to be published in the **Federal Register** as a direct final rule in May 2010, and the rule would be effective (and the Amendment would be approved), in August 2010, if the NRC does not receive any significant adverse comments during the public comment period.

The proposed action would exempt FPL from the requirements of 10 CFR 72.48(c)(1)(ii)(B), 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214, and would allow them to load spent fuel into the TN NUHOMS® HD 32PTH dry shielded canister under the terms of the proposed Amendment 1 to CoC 1030, prior to Amendment 1 being approved under the NRC rulemaking process described above.

The NRC has determined that the exemption, if granted, will contain the following conditions:

(1) The exemption pertains only to the cask loading campaigns (where spent fuel is transferred from the spent fuel pools to the casks) at the St. Lucie Unit 1 and Unit 2 ISFSI scheduled for the summer 2010, as identified in the FPL January 12, 2010 letter.

(2) If the NRC receives significant adverse comments (as determined by the NRC) during the public comment period for the direct final rule, and as a result of such comments, changes to the preliminary SER, draft CoC, or draft TS are required, FPL will then be required to address those changes in a manner deemed satisfactory to NRC staff.

Need for the Proposed Action: FPL requested this exemption in order to be

able to use the proposed Amendment 1 in its entirety for the St. Lucie Unit 1 and Unit 2 ISFSI fuel loading campaigns, scheduled to begin in July 2010. St. Lucie Unit 2 is currently scheduled to begin a refueling outage (RFO) in January 2011. During the Unit 2 RFO approximately 76 fuel assemblies will be removed from the core for storage in the Unit 2 spent fuel pool. Due to the addition of these 76 assemblies, when Unit 2 is scheduled to restart in March 2011, FPL will no longer have full core offload capability. Similarly, for St. Lucie Unit 1, an RFO is scheduled to begin in August 2011. During the Unit 1 RFO, approximately 88 irradiated fuel assemblies will be removed from the core for storage in the Unit 1 spent fuel pool. When Unit 1 is scheduled to restart in November 2011, FPL will no longer have full core offload capability for Unit 1. In addition, if fuel from the Unit 1 spent fuel pool is not transferred to the ISFSI prior to the Unit 1 RFO, there will not be sufficient room in the pool to pre-stage the 88 new fuel assemblies, complicating the fuel handling evolutions required for core reload during the Unit 1 RFO.

In order to ensure that Unit 1 can retain full core offload capability, FPL plans to transfer 256 spent fuel assemblies from the current spent fuel storage inventories at Unit 1 and Unit 2 to the ISFSI prior to the Unit 2 RFO. These spent fuel assemblies will be placed from the spent fuel pool into 8 dry storage casks of 32 assemblies each and then transferred to the ISFSI for interim, long-term dry storage (the CoC expiration date, which is listed in 10 CFR 72.214, is January 10, 2027; in accordance with the provisions of 10 CFR 72.240, the certificate holder, TN, may apply for a renewal of the CoC).

Rescheduling the spent fuel loading campaign for later in the year, after Amendment 1 to CoC 1030 is finalized would be difficult, and costly, given the existing planned sequence of events. FPL has scheduled personnel and training, and planned for equipment to support a practice dry run during the June/July 2010 time period, to be followed directly by the planned cask loading. The planned loading will then be followed closely by the Unit 2 RFO and restart, and then the Unit 1 RFO and restart.

The proposed action is necessary because the NRC has not yet completed the rulemaking process required for final approval of TN NUHOMS® HD Amendment 1 to CoC 1030 and the current CoC (Amendment 0) for the TN NUHOMS® HD Storage System (HD–32PTH) does not include the necessary provisions for the planned loading campaigns. The staff has completed its technical review of the amendment application, has prepared a preliminary Safety Evaluation Report, and a proposed CoC with draft Technical Specifications. The documents have been forwarded to the NRC's rulemaking staff for publication in the **Federal Register**. The proposed rule is expected to be published for comment in the **Federal Register** in May 2010, and the rule would be effective (and the Amendment approved) in August 2010, following resolution of any public comments. Final approval of TN NUHOMS® HD Amendment 1 will not be completed in time for FPL to use Amendment 1 to CoC 1030 for their ISFSI loading campaign.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the proposed action, and concludes that there will be no significant environmental impact if the exemption is granted. The staff has determined that the proposed action would not endanger life or property. The potential impact of using the NUHOMS® HD system was initially presented in the Environmental Assessment (EA) for the rulemaking to add the TN NUHOMS® HD Horizontal Modular Storage System for Irradiated Nuclear Fuel to the list of approved spent fuel storage casks in 10 CFR 72.214 (71 FR 25740, dated May 2, 2006 (Direct Final Rule) and 71 FR 71463, dated December 11, 2006 (Final Rule)).

The staff performed a safety evaluation of the proposed exemption. The staff has determined that FPL's planned use of Amendment 1 to CoC 1030 for their planned ISFSI loading campaign does not differ in any way from the provisions of the proposed Amendment, which has been approved by technical staff and which is currently in the rulemaking process. In addition, the staff has determined that the generic analysis supporting Amendment 1 to CoC 1030 would apply to the proposed action at the St. Lucie ISFSI site. The loading of spent nuclear fuel assemblies at St. Lucie Unit 1 and Unit 2 in accordance with the proposed Amendment 1 to CoC 1030 does not increase the probability or consequences of accidents. There are no changes being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure as a result of the proposed activities. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The proposed action only affects the requirements associated with the fuel assemblies that can be loaded in the casks and does not affect non-radiological plant effluents, or any other aspects of the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Because there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact were not evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption would result in no change in the current environmental impact.

Agencies and Persons Consulted: This exemption request was discussed with Cindy Mulkey of the Florida Department of Environmental Protection, Siting Coordination Office, on March 12, 2010. She stated that the State had no comments on the technical aspects of the exemption. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action will not affect listed species or a critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion: The staff has reviewed the exemption request submitted by FPL. Allowing loading of fuel assemblies at St. Lucie Unit 1 and Unit 2 under the proposed Amendment 1 to CoC 1030 would have no significant impact on the environment.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting the exemption from specific provisions of 10 CFR 72.48(c)(1)(ii)(B), 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214, to allow FPL to load spent nuclear fuel assemblies at St. Lucie Unit 1 and Unit 2 under the proposed Amendment 1 to CoC 1030, subject to conditions described above, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an

environmental impact statement for the proposed exemption is not warranted.

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents regarding this proposed action are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The request for exemption dated January 12, 2010 (ML100141456), was docketed under 10 CFR part 50, Docket Nos. 50–335 and 50–389, and under 10 CFR part 72, Docket No. 72–1030. These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. 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, or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 31st day of March. 2010.

For the Nuclear Regulatory Commission.

B. Jennifer Davis,

Senior Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–8111 Filed 4–8–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–21 and CP2010–36; Order No. 437]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently–filed Postal Service Request to add Global Reseller Expedited Package Contracts Negotiated Service Agreements to the Competitive Product List, along with a related contract. The notice addresses procedural steps.

DATES: Comments are due: April 15, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot file electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6824 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On March 29, 2010, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Global Reseller Expedited Package (GREP) Contracts to the Competitive Product List.[1] The Postal Service asserts that Governors' Decision No. 10–1 establishes prices and classifications "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3) for the GREP Contracts product.[2] The Postal Service asserts this classification change is consistent with the requirements of 39 U.S.C. 3642, and further proposes conforming Mail Classification Schedule language. *Id.* at 1–2. This Request has been assigned Docket No. MC2010–21.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2010–36. The Postal Service filed a copy of the contract, Governors' Decision with attachments, and supporting financial documentation under seal. *Id.* at 2.

Additionally, in support of its Request, the Postal Service filed five attachments as follows:

•Attachment 1–a Statement of Supporting Justification as required by 39 CFR 3020.32;

•Attachment 2–a redacted copy of Governors' Decision No. 10–1 which establishes prices and classifications for GREP contracts, a description of applicable GREP contracts including proposed Mail Classification Schedule language, formulas for prices, an analysis and certification of the formulas as required by 39 CFR 3015 and certification of the Governors' vote;

•Attachment 3–a redacted copy of the contract, and applicable annexes;

•Attachment 4–a certified statement required by 39 CFR 3015.5(c)(2); and

•Attachment 5–an application for non-public treatment of materials to maintain the contract and supporting documents under seal.

In the Statement of Supporting Justification, Frank Cebello, Executive Director, Global Business Management, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment 1. Thus, Mr. Cebello contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.,* Attachment 4. He asserts that the prices for the GREP contract "should cover its attributable costs and preclude the subsidization of competitive products by market dominant products." *Id.*

The Postal Service states that it uses GREP contracts to provide discounted prices for Express Mail International and/or Priority Mail International to a Sales Agent also known as a Reseller. The Reseller, is not a mailer, but instead, markets Express Mail International and Priority Mail International at discounted prices to customers, particularly small– and medium–sized businesses. *Id.* at 3.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Governors' Decision No. 10–1. *Id.* at 1. The term of the contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. *Id.* at 3.

Substantively, the Request seeks to add the instant GREP contract and any subsequent functionally equivalent GREP Contracts as one product to the Competitive Product List. *Id.* at 2.

The Postal Service's Request advances reasons why the GREP Contracts product is competitive, not covered by the postal monopoly and is in compliance with 39 3642 (b)(2), all of which are highlighted in the Request. *Id.* at 3–4. The Postal Service urges the Commission to approve the request to add the GREP contracts product to the Competitive Product List. *Id.* at 7.

Notice of Filing

The Commission establishes Docket Nos. MC2010–21 and CP2010–36 for

[1] Request of the United States Postal Service to Add Global Reseller Expedited Package Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Enabling Governors' Decision, March 29, 2010 (Request).

[2] Governors' Decision No. 10–1, filed March 24, 2010, establishes prices and classifications not of general applicability for Global Reseller Expedited Package Contracts.

consideration of matters raised in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B.

Comments are due no later than April 15, 2010. The public portions of these filings can be accessed via the Commission's Web site *(http://www.prc.gov).*

The Commission appoints Kenneth Richardson to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2010–21 and CP2010–36 for consideration of matters raised by the Postal Service's Request.

2. Comments by interested persons in these proceedings are due no later than April 15, 2010.

3. Pursuant to 39 U.S.C. 505, Kenneth Richardson is appointed to serveas the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–8055 Filed 4–8–10; 8:45 am]

BILLING CODE 7710–FW–S

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before June 8, 2010.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joan Elliston, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joan Elliston, Office of Government Contracting, 202–205–7190 *joan.elliston@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Office of Business Development of the U.S. Small Business Administration seeks information solely for the purpose of enhancing the 8(a) Business Development program ((8(a) BD program) on the impact of the program on 8(a) graduated firms and 8(a) firms that voluntarily exited the program after substantially achieving business targets in the context of goals/criteria set forth by statute and regulatory authority. A contractor will be chosen and tasked with providing analyses, evaluation and insight and will be required to collect data. This assessment will rely on survey data as well as existing industry, government and private resources.

Title: "Impact of the 8(a) Business Development Program."

Description of Respondents: On Occasion.

Form Number: N/A.

Annual Responses: 4,000.

Annual Burden: 50 minutes.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–8146 Filed 4–8–10; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12104 and #12105]

Delaware Disaster # DE–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Delaware (FEMA–1896–DR), dated 03/31/2010.

Incident: Severe Winter Storms and Snowstorms.

Incident Period: 02/05/2010 through 02/11/2010.

Effective Date: 03/31/2010.

Physical Loan Application Deadline Date: 05/31/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/31/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/31/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kent, New Castle, Sussex.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ..	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12104B and for economic injury is 12105B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–8145 Filed 4–8–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing Region IX Regulatory Fairness Board

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, notice is hereby given that the U.S. Small Business Administration (SBA) Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a National Regulatory Fairness Hearing on Monday, April 26, 2010, at 1:30 p.m. The forum is open to the public and will take place at the Health Services Complex-Rosecrans, Harbor Conference Room, 3851 Rosecrans Street, San Diego, CA 92110–3115. The purpose of the meeting is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory

enforcement issues affecting their members.

Anyone wishing to attend or make a presentation must contact Cynthia Harris, in writing or by fax, in order to be placed on the agenda. Cynthia Harris, Business Development Specialist, SBA, San Diego District Office, 550 West C Street, Suite 550, San Diego, CA, phone (619) 727–4884 and fax (202) 481–0895, *e-mail: Cynthia.harris@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Meaghan Burdick,

Deputy Chief of Staff.

[FR Doc. 2010–8147 Filed 4–8–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rules 7a–15 thru 7a–37, OMB Control No. 3235–0132, SEC File No. 270–115.

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") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rules 7a–15 through 7a–37 (17 CFR 260.7a–15—260.7a–37) under the Trust Indenture Act of 1939 set forth the general requirements relating to applications, statements and reports that must be filed under the Act by issuers of, and trustees to, qualified indentures under the Act. The respondents are persons and entities subject to requirements of the Trust Indenture Act. Rules 7a–15 through 7a–37 are disclosure guidelines and do not directly result in any collection of information. The Rules are assigned only one burden hour for administrative convenience.

Written comments are invited on: (a) Whether this 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 agency's estimate of the burden imposed by the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, 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.*

Dated: April 5, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8156 Filed 4–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form S–8, OMB Control No. 3235–0066, SEC File No. 270–66.

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") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form S–8 (17 CFR 239.16b) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) is the primary registration statement used by eligible registrants to register securities to be issued in connection with employee benefit plans. We estimate that Form S–8 takes approximately 24 hours per response to prepare and is filed by approximately 2,680 respondents. In addition, we estimate that 50% of the 24 hours per response (12 hours per response) is prepared by the filer for a total annual reporting burden of 32,160 hours (12 hours per response × 2,680 responses).

Written comments are invited on: (a) Whether this 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 agency's estimate of the burden imposed by the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, 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.*

Dated: April 5, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8157 Filed 4–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61824, File No. 4–518]

Joint Industry Plan; Notice of Filing and Order Granting Temporary Effectiveness of Amendment to Plan Establishing Procedures Under Rule 605 of Regulation NMS

April 1, 2010.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 608 of Regulation NMS,[2] notice is hereby given that on March 30, 2010, EDGA Exchange, Inc. ("EDGA") and EDGX Exchange, Inc. ("EDGX") submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the national market system plan that establishes procedures under Rule 605 of Regulation NMS ("Joint-SRO Plan" or "Plan").[3] The amendment proposes to add EDGA and EDGX as participants to the Joint-SRO Plan. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Joint-SRO Plan

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1–5 under the Act (n/k/a Rule 605 of Regulation NMS). *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

amendment, and to grant temporary effectiveness to the proposed amendment through August 9, 2010.

I. Description and Purpose of the Amendment

The current participants to the Joint-SRO Plan are the American Stock Exchange LLC (n/k/a NYSE Amex, Inc.), BATS Exchange, Inc., Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.), Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock Exchange[SM]), International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.), New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.). The proposed amendment would add EDGA and EDGX as participants to the Joint-SRO Plan.

Each of EDGA and EDGX has submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants. Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section 11(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint-SRO Plan amendment 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 4–518 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–518. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such submission 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 4–518 and should be submitted on or before May 10, 2010.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

The Commission finds that the proposed Joint-SRO Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[4] Specifically, the Commission believes that the proposed amendment, which permits EDGA and EDGX to become participants to the Joint-SRO Plan, is consistent with the requirements of Section 11A of the Act, and Rule 608 of Regulation NMS. The Plan establishes appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The proposed amendment to include EDGA and EDGX as participants in the Joint-SRO Plan will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers.

The Commission finds good cause to grant temporary effectiveness to the proposed Joint-SRO Plan amendment, for 120 days, until August 9, 2010. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow EDGA and EDGX to become participants in the Joint-SRO Plan. On March 12, 2010, the Commission granted the application of EDGA and EDGX for registration as national securities exchanges.[5] One of the conditions to operations of EDGA and EDGX is participation in national market system plans, including the Joint-SRO Plan.[6] As a Plan participant, each of EDGA and EDGX would have timely information on the Plan procedures as they are formulated and modified by the participants. The Commission finds, therefore, that granting temporary effectiveness of the proposed Joint-SRO Plan amendment is appropriate and consistent with Section 11A of the Act.[7]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[8] and Rule 608 of Regulation NMS,[9] that the proposed Joint-SRO Plan amendment is approved for 120 days, through August 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8152 Filed 4–8–10; 8:45 am]

BILLING CODE 8011–01–P

[4] In approving this proposed Joint-SRO Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 22, 2010).

[6] *Id.*

[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on April 14, 2010 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will consider whether to propose a large trader reporting requirement, pursuant to Section 13(h) of the Securities Exchange Act of 1934, which would require large traders to identify themselves to the Commission and require broker-dealers to maintain certain related transaction records.

Item 2: The Commission will consider whether to propose rule amendments regarding (a) prohibiting unfairly discriminatory terms that inhibit efficient access to quotations in a listed option on exchanges, and (b) placing limits on fees for the execution of an order against any quotation in an options series that is the best bid or best offer of an exchange.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: April 7, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–8324 Filed 4–7–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, April 14, 2010 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, April 14, 2010 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
An adjudicatory matter;
Litigation matters; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: April 6, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–8209 Filed 4–7–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61831; File No. SR–NYSEArca–2010–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Commentary .05 to Rule 6.4 Series of Options for Trading

April 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2010 NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Rule 6.4–Series of Options for Trading by adopting new provisions governing strike price intervals. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to (i) add a provision to Rule 6.4 codifying the strike price intervals presently used by NYSE Arca for listed options, and (ii) create a provision that will allow for $5 strike price intervals of options on Exchange Traded Funds Shares ("ETFs") where the strike price is over $200.

Options traded on NYSE Arca are listed at strike price intervals of $2.50 or greater where the strike price is less than $25.00, $5.00 or greater where the strike price is greater than $25.00, and $10.00 or greater where the strike price is greater than $200.00. This listing convention for strike price intervals is the same as is presently in place at other U.S. option exchanges.[3] The Exchange now proposes to adopt new Rule 6.4(f) in order to codify these standards that are presently in use at NYSE Arca.

Commentary .05 to Rule 6.4–Series of Options Open for Trading states that strike price intervals of options on Exchanged-Traded Fund Shares will be $1 or greater where the strike price of the underlying asset is $200 or less. Most underlying ETF options trade for less than $200 per share; therefore most series are priced at $1 strike price intervals. However, some higher priced ETFs do have listed options series with strike prices over $200.[4] NYSE Arca does not have a provision that allows ETF options to list and trade at $5 strike

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* International Securities Exchange ("ISE") Rule 504(d) and NYSE Amex Rule 903 Commentary .05.

[4] As an example, ETF options trading under the symbols ILF, FXI, MDY and EEM all have listed strike prices greater than $200.

price intervals where the strike price is more than $200. This limitation puts NYSE Arca at a competitive disadvantage to other exchanges that are able to list ETF options series, with strike prices over $200, at $5 price intervals.

The Exchange believes that the rule proposal to allow for the listing of option series at $5 strike price intervals above $200, for options on ETFs, will enable the Exchange to competitively list and trade ETF options at appropriate strike price intervals. This proposed rule is based on similar rules in effect at NYSE Amex LLC ("NYSE Amex"), the Chicago Board Options Exchange ("CBOE") and NASDAQ OMX PHLX.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will allow the Exchange to competitively list and trade ETF options at appropriate strike price intervals which are also commensurate with the rules of other options exchanges.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing, thereby giving the Exchange the ability to compete with other option exchanges by listing and trading ETF options at the same strike price intervals. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will encourage fair competition among the exchanges. Therefore, the Commission designates the proposal operative upon filing.[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 Number SR–NYSEArca–2010–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–20. 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,[11] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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–NYSEArca–2010–20 and should be submitted on or before April 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8151 Filed 4–8–10; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* NYSE Amex Rule 903 Commentary .05, CBOE Rule 5.5 Commentary .08 and NASDAQ OMX PHLX Rule 1012 Commentary .05.

[6] 15 U.S.C. 78f(b).

[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). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61830; File No. SR–NASDAQ–2010–040]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for Option Orders Routed to Away Markets

April 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to expand the list of options that will be assessed routing fees of $0.30 per contract for customer orders and $0.55 per contract for Firm and Market Maker orders that are routed from NOM to NASDAQ OMX PHLX, Inc. ("Phlx"). The proposal also includes a technical change to properly alphabetize the symbol "BAC" in the rule text. NASDAQ will make the proposed rule change effective for transactions settling on or after April 1, 2010.

The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* at NASDAQ's principal office, 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, 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 to modify Rule 7050 governing the fees assessed for options orders entered into NOM but routed to and executed on NASDAQ OMX PHLX, Inc. ("Phlx"). Specifically, NASDAQ is proposing to expand the number of options to which certain routing fees apply to reflect the expansion of the fee schedule for adding and removing liquidity on the Phlx.[5]

NASDAQ currently assesses a $0.30 per contract routing fee for customer orders, and a $0.55 per contract routing fee for Firm and Market Maker orders routed from NOM to Phlx for options that are subject to fees and rebates for adding and removing liquidity as described in the Phlx fee schedule. To reflect the additions Phlx is making to its fee schedule, NASDAQ proposes to add the following options to the table set forth in Rule 7050(4): Alcoa, Inc. ("AA"); American International Group, Inc. ("AIG"); Advanced Micro Devices, Inc. ("AMD"); AMR Corporation ("AMR"); Caterpillar, Inc. ("CAT"); Cisco Systems, Inc. ("CSCO"); Ford Motor Company ("F"); Direxion Daily Financial Bull 3X Shares ("FAS"); Direxion Daily Financial Bear 3X Shares ("FAZ"); SPDR Gold Trust ("GLD"); Intel Corporation ("INTC"); JPMorgan Chase & Co. ("JPM"), Las Vegas Sands Corp. ("LVS"); MGM Mirage ("MGM"); Micron Technology, Inc. ("MU"); Newmont Mining Corporation ("NEM"); Palm, Inc. ("PALM"); Pfizer, Inc. ("PFE"); Potash Corp./Saskatchewan, Inc. ("POT"); SanDisk Corporation ("SNDK"); AT&T, Inc. ("T"); UAL Corporation ("UAUA"); Verizon Communications, Inc. ("VZ"), and United States Steel Corporation ("X").

The Exchange is proposing these fees to recoup the majority of transaction and clearing costs associated with routing orders to Phlx. As with all fees, the Exchange may adjust these routing fees by filing a new proposed rule change.

The Exchange has designated this proposal to be operative for trades settling on or after April 1, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] 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 NASDAQ operates or controls.

NASDAQ further believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

NASDAQ is one of eight options markets in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance

[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).

[5] *See* SR–Phlx–2010–47 (March 22, 2010). For a description of the Phlx's current fee schedule for adding and removing liquidity, *See* Securities Exchange Act Release No. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010) (SR–Phlx–2010–33).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

of the purposes of the Act, as amended. To the contrary, NASDAQ has designed its fees to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading.

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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and paragraph (f)(2) of Rule 19b–4 [10] thereunder. 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–NASDAQ–2010–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2010–040 and should be submitted on or before April 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–8153 Filed 4–8–10; 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).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0066]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Internal Revenue Service (IRS))—Match #1305

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that is scheduled to expire on March 31, 2010.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with the IRS.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Deputy Commissioner for Budget, Finance and Management as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: March 31, 2010.

Michael G. Gallagher,

Deputy Commissioner for Budget, Finance and Management.

Notice of Computer Matching Program, SSA With the Internal Revenue Service (IRS)

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions, terms, and safeguards under which the IRS will disclose to us certain return information for the purpose of verifying eligibility or the correct subsidy percentage of benefits provided under section 1860D–14 of the Social Security Act (Act).

C. Authority for Conducting the Matching Program

Section 6103(1)(7) of the Internal Revenue Code authorizes IRS to disclose return information with respect to unearned income to Federal, State, and local agencies administering certain benefit programs under the Act.

Section 1860D–14 of the Act requires us to verify the eligibility of a person who seeks to be considered for the prescription drug subsidy under Section 1860D of the Act and who self-certifies his or her income, resources and family size.

D. Categories of Records and Persons Covered by the Matching Program

We will provide IRS with identifying information with respect to applicants for, and recipients of, the prescription drug subsidy from the existing Medicare Database (MDB File) system of records, SSA/ORSIS 60–0321, originally published at 69 FR 77816 (December 28, 2004), and as revised at 71 FR 42159 (July 25, 2006). IRS extracts return information with respect to unearned income from its Information Returns Master File (IRMF) system of records, Treasury/IRS 22.061, published at 73 FR 13302 (March 12, 2008), using the same extract as the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) program. We will maintain return information provided by the IRS through this match in the MDB File system of records.

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2010–8081 Filed 4–8–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6951]

Culturally Significant Object Imported for Exhibition Determinations: "Through African Eyes: The European in African Art, 1500—Present"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "Through African Eyes: The European in African Art, 1500—Present," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Detroit Institute of Arts, Detroit, Michigan, from on or about April 18, 2010, until on or about August 8, 2010, at the Nelson Atkins Museum of Art, Kansas City, Missouri, from on or about September 25, 2010, to on or about January 8, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 2, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–8142 Filed 4–8–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6952]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting on April 23, 2010, at the University of Southern California Annenberg School for Communication and Journalism, Room ASC 207, Geoffrey Cowan Forum. Address: 3502 Watt Way, Los Angeles, CA 90089. The meeting will begin at 9:30 a.m. and conclude at 11:30 a.m. The Commissioners will discuss public diplomacy issues, including measurement of U.S. government public diplomacy efforts.

The Advisory Commission was originally established under Section 604 of the United States Information and Exchange Act of 1948, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. It was reauthorized pursuant to Public Law 111–70 (2009), 22 U.S.C. 6553.

The Advisory Commission is a bipartisan panel created by Congress to assess public diplomacy policies and programs of the U.S. government and publicly funded nongovernmental organizations. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include William Hybl, who is the Chairman; Jay Snyder of New York; Penne Korth Peacock of Texas; Lyndon Olson of Texas; John Osborn of Pennsylvania; and Lezlee Westine of Virginia.

Seating at this meeting is limited. To attend and for more information, please contact Carl Chan at (202) 632–2823. *E-mail: chanck@state.gov.*

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in that the University of Southern California was not able to confirm this meeting until the morning of April 5th. This Notice was published as soon as possible after that confirmation.

Dated: April 5, 2010.

Carl Chan,

Executive Director, ACPD.

[FR Doc. 2010–8140 Filed 4–8–10; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 27, 2010

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2010–0077.

Date Filed: March 26, 2010.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 630—Resolution 010t, Composite Resolutions 300, 301, Baggage Allowance Weight System, Baggage Allowance Piece System (Memo 1565).

Intended Effective Date: 1 April 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–8110 Filed 4–8–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35363]

R.J. Corman Railroad Property, LLC—Acquisition Exemption—NC Railroad, Inc.

R.J. Corman Railroad Property, LLC (RJC Railroad Property), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by purchase from NC Railroad, Inc. (NCRL), approximately 42 route miles of rail line extending from milepost 0.144 at or near Oneida to milepost 42.0 at or near Devonia, in Scott, Campbell, and Anderson Counties, TN.

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35364, *R.J. Corman Railroad Company/Bardstown Line—Lease and Operation Exemption—R.J. Corman Railroad Property, LLC,* wherein R.J. Corman Railroad Company/Bardstown Line (RJC Railroad Company) seeks to lease from RJC Railroad Property and to operate the line that RJC Railroad Property is purchasing from NCRL.

Based on projected revenues for the line, RJC Railroad Property expects to remain a Class III rail carrier after consummation of the proposed transaction. RJC Railroad Property certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. In addition, RJC Railroad Property provides that its projected annual revenues will not exceed $5 million.

RJC Railroad Property states that it intends to consummate the transaction on or before April 26, 2010, and that RJC Railroad Company will commence operations on behalf of RJC Railroad Property on or about the same day. The earliest this transaction may be consummated is April 25, 2010, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than April 16, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35363, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on David R. Irvin and Elizabeth E. Darby, Moynahan, Irvin, Mooney & Stansbury, PSC, 110 North Main Street, Nicholasville, KY 40356.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 2, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–7957 Filed 4–8–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, State Route 28 between State Route 267 and Chipmunk Street in the community of Kings Beach, in the County of Placer, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 6, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Jody Brown, Caltrans Senior Environmental Planner, 2800 Gateway Oaks Drive, Sacramento, CA 95833 or call (916) 274–5908 or e-mail *jody_brown@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to improve bicycle and pedestrian circulation, implement streetscape elements, and meet water quality needs within the Kings Beach Commercial Core area. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on May 16, 2008, in the Finding of No Significant Impact (FONSI) issued on March 26, 2010, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA and FONSI can be viewed and downloaded from the Placer County Web site at *http://www.placer.ca.gov/Departments/Works/Projects/KingsBeach/KingsBeachCurrentUpdate.aspx.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675.

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1344].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management: E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: April 5, 2010.

Bill Forrester,

Director, Structures, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–8101 Filed 4–8–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35364]

R.J. Corman Railroad Company/ Bardstown Line—Lease and Operation Exemption—R.J. Corman Railroad Property, LLC

R.J. Corman Railroad Company/ Bardstown Line (RJC Railroad Company), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from R.J. Corman Railroad Property, LLC (RJC Railroad Property), and to operate approximately 42 route miles of RJC Railroad Property's rail line extending from milepost 0.144 at or near Oneida to milepost 42.0 at or near Devonia, in Scott, Campbell, and Anderson Counties, TN.

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35363, *R.J. Corman Railroad Property, LLC—Acquisition Exemption—NC Railroad, Inc.,* wherein RJC Railroad Property seeks to acquire by purchase from NC Railroad, Inc., the 42 route miles of rail line described above.

Based on projected revenues for the line, RJC Railroad Company expects to remain a Class III rail carrier after consummation of the proposed transaction. RJC Railroad Company certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. In addition, RJC Railroad Company provides that its projected annual revenues will not exceed $5 million.

RJC Railroad Company states that it intends to consummate the transaction on or before April 26, 2010, and will commence operations on behalf of RJC Railroad Property on or about the same day. The earliest this transaction may be consummated is April 25, 2010, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than April 16, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35364, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David R. Irvin and Elizabeth E. Darby, Moynahan, Irvin, Mooney & Stansbury, PSC, 110 North Main Street, Nicholasville, KY 40356.

Board decisions and notices are available on our Web site at *http://www.stb.dot. gov.*

Decided: April 2, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–7954 Filed 4–8–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting by Web conference of the Advisory Council on Transportation Statistics (ACTS). This 90 minute Web conference will be held on Friday, May 14, 2010, from 1 p.m. to 2:30 p.m. EST.

Section 5601(o) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C., App. 2) to advise the Director of BTS on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department.

The following is a summary of the Web conference tentative agenda: (1) Welcome by RITA Administrator and introduction of council members; (2) Meeting purpose and agenda review; (3) Overview of ACTS purpose, roles, and responsibilities; (4) Brief ethics review; (5) Overview of the Bureau of Transportation Statistics organization, management, mission, and plans related to the Secretary's strategic goals; and (6) Council Members' questions and discussion regarding next steps. Participation in the Web conference is open to the public, but the limited number of conference telephone lines will be available on a first come, first served basis. Members of the public who wish to participate must notify Chanel Winston at *chanel.winston@dot.gov,* not later than April 25, 2010, at which time the Web conference URL and teleconference phone number will be provided. Members of the public may present oral statements at the meeting with the approval of Steven D. Dillingham,

Director of the Bureau of Transportation Statistics. Non-committee members wishing to present oral statements or obtain information should contact Ms. Winston via email no later than April 27, 2010.

Questions about the agenda or written comments may be emailed or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, Attention: Chanel Winston, 1200 New Jersey Avenue, SE., Room # E34–455, Washington, DC 20590, or faxed to (202) 366–1270. BTS requests that written comments be received by April 30, 2010.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 2nd day of April 2010.

Steven D. Dillingham,

Director, Bureau of Transportation Statistics

[FR Doc. 2010–8109 Filed 4–8–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010]

Passenger Facility Charge Database System for Air Carrier Reporting

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

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice of Availability to inform interested parties of the availability of the Passenger Facility Charge (PFC) database system to report PFC quarterly report information. In accordance with 14 CFR part 158.63, the public agency approved to collect PFCs must provide quarterly PFC reports to air carriers collecting PFCs for the public agency and the FAA. In accordance with § 158.65, each air carrier collecting PFCs for a public agency must provide quarterly reports to the public agency unless otherwise agreed to by the collecting air carrier and the public agency. The FAA has developed a national PFC database system in order to more easily track the PFC program on a nationwide basis. The PFC database system was developed in three phases. The first phase was a national internal database for FAA use. The second phase expanded the database to allow public agencies to enter and access the PFC quarterly reports for their airport(s). The third phase expands the system to provide database access to the air carriers. The first and second phases of the database are complete. The third phase will allow air carriers to enter PFC collection and remittance information directly into the PFC database on a monthly basis. Use of the PFC database is voluntary and is not the sole means of complying with sections 158.63 and 158.65. However, as stated in 158.20(b), once the air carriers have access to the FAA's PFC database system, those air carriers and public agencies participating in the system will no longer be required to transmit quarterly reports to any interested party.

DATES: The system will be fully available to all users (FAA, public agencies, and air carriers) on June 21, 2010.

FOR FURTHER INFORMATION CONTACT: Jane Johnson, Financial Analysis and Passenger Facility Charge Branch (APP–510), Room 619, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–5878, e-mail: *9-AWA-ARP-APP-PFC-Info@FAA.GOV.*

SUPPLEMENTARY INFORMATION: The PFC program is codified in Title 49 United States Code (U.S.C.) § 40117 and is implemented by 14 CFR part 158. The PFC program provides an important and independent source of financing for the needs of U.S. commercial service airports through an airport enplanement charge per passenger of $1, $2, $3, $4, or $4.50 per trip segment up to a maximum of two segments on a one-way trip and four segments on a round trip. Air carriers collect and remit the PFC fees directly to an eligible public agency authorized by the FAA in accordance with statutory and regulatory requirements to impose a PFC at a commercial service airport(s) it controls.

Under part 158, public agencies controlling commercial service airports can apply to the FAA for authority to impose and/or use a PFC to finance approved, eligible airport related projects. Section 158.3 defines a public agency to be a state or any agency or one or more states: a municipality or other political subdivision of a state; an authority created by Federal, State, or local law; a tax-supported organization; or an Indian tribe or pueblo that controls a commercial service airport. A private entity controlling an airport participating in the Pilot Program for Private Ownership of Airports (49 U.S.C. 47134) may also apply to impose and use a PFC.

The FAA must issue a final decision approving or disapproving a PFC application, in whole or in part. Following the FAA's full or partial approval of an application to impose a PFC, the public agency must notify air carriers and foreign air carriers required to collect PFCs at its airport(s) of the FAA's approval, including the approved PFC level and dates of collection. Air carriers collect PFCs from their passengers in accordance with 158.45 or 158.47. Air carriers collecting PFCs are required by section 158.51 to remit the PFC revenue collected, less a prescribed handling fee, to the appropriate public agency on a monthly basis.

Beginning in the year that PFC revenues are first collected by air carriers on behalf of a public agency, such public agencies approved for PFC collection are required by section 158.63 to provide quarterly reports to air carriers collecting PFC revenue for the public agency and the FAA.

The quarterly report is designed to provide the air carriers and the FAA with sufficient information for oversight of PFC revenue. The public agency quarterly report must be provided on or before the last day of the calendar quarter or other period agreed to by the collecting carrier and public agency for which funds were collected.

Similarly, each air carrier collecting PFCs for a public agency must file quarterly reports to the public agency, unless otherwise agreed to by the collecting air carrier and public agency. The air carrier's quarterly report provides an accounting of funds collected and funds remitted to each public agency.

The air carrier's quarterly report is required to be filed on or before the last day of the calendar month following the calendar quarter, or other period as agreed to by the collecting carrier and public agency for which funds were collected.

The FAA's PFC database has been designed to facilitate electronic filing and retrieval of the public agencies' and the air carriers' quarterly reports. This will allow both user groups timely access to the other party's reports and will facilitate standardized record keeping.

The PFC database has been designed with two methods for air carriers to enter their quarterly report information. The first method is a manual data entry wherein the air carrier will select each airport and inputs each data element. The second method is an upload of the quarterly information into the database

via a pre-established format through an .xml interface.

Public agencies may enter PFC remittance information into the database by either manual data entry or upload via a pre-established format through an .xml interface. The public agency data entry for projects is limited to manual entry wherein the public agency selects each appropriate project and inputs the data for that project.

The FAA notes that approximately 93 percent of the public agencies approved to collect PFC participate in the PFC database system. Those public agencies and air carriers choosing to use the database will no longer be required to distribute their quarterly reports to any interested party in any other way beginning June 21, 2010.

Issued in Washington, DC, on March 25, 2010.

Frank San Martin,

Manager, Airports Financial Assistance Division.

[FR Doc. 2010–8124 Filed 4–8–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–16]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 29, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0216 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie B. Taylor, phone (816) 329–4134, fax (816) 320–4090, e-mail *leslie.b.taylor@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 2, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0216.

Petitioner: Hawker Beechcraft Corporation.

Section of 14 CFR Affected: 14 CFR 23.783(f)(1).

Description of Relief Sought: Hawker Beechcraft Corporation (HBC) requests an exemption from the specific dimensions of the passenger entry door of the Hawker Beechcraft Model 390–2. The door has basic dimensions greater than the minimum required by § 23.783(f)(1). The total area of the model 390–2 cabin door opening minus the area occupied by localized projections is greater than the minimum area required by § 23.783(f)(1); however, the minimum width dimension cannot be met at discrete points due to the protrusions.

[FR Doc. 2010–8128 Filed 4–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18898]

Withdrawal of Proposed Improvements to the Motor Carrier Safety Status Measurement System (SafeStat) and Implementation of a New Carrier Safety Measurement System (CSMS)

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

ACTION: Notice; request for comments.

SUMMARY: The FMCSA announces that it will replace its Motor Carrier Safety Status Measurement System (SafeStat) with an improved Carrier Safety Measurement System (CSMS) on November 30, 2010. The CSMS has been developed and tested as part of the Agency's Comprehensive Safety Analysis 2010 (CSA 2010) initiative. Therefore, FMCSA is withdrawing the notice of proposed improvements to SafeStat that was published for public comment on May 3, 2006. SafeStat is an automated algorithm currently used by FMCSA to identify high-risk and other motor carriers for on-site compliance reviews. By implementing the new CSMS algorithm, FMCSA will be able to better identify high-risk motor carriers, make more efficient and effective the Agency's and its State partners' allocation of compliance and enforcement resources and provide the motor carrier industry and other safety stakeholders with more comprehensive, informative, and regularly updated safety performance data.

From April 12, 2010 to November 30, 2010, FMCSA will provide individual motor carriers with a preview of their performance data at *http://csa2010.fmcsa.dot.gov.* This preview in advance of full implementation on November 30, 2010, will improve safety by effecting early compliance and providing opportunities for motor carriers to become better educated on the new CSMS.

DATES: Submit comments before September 30, 2010.

ADDRESSES: You may submit comments identified by the Docket Number in the heading of this notice by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the

instructions for submitting comments on the Federal electronic docket site.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. E.S.T., Monday through Friday, except Federal holidays.

Instructions: For detailed instructions on submitting comments and for additional information, see the Public Participation heading below. Note that all comments received, including any personal information, will be posted without change to *http://www.regulations.gov.* Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., E.S.T., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://docketsinfo.dot.gov.*

Public participation: The *www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want FMSCA to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 1300, Pittsburgh, PA 15222, Telephone 412–395–4816 E-Mail: *bryan.price@dot.gov.*

SUPPLEMENTARY INFORMATION:

Comprehensive Safety Analysis 2010 (CSA 2010)

CSA 2010 is a major FMCSA safety initiative that will improve the effectiveness of the Agency's compliance and enforcement programs. CSA 2010 will help the Agency assess the safety performance of a greater segment of the motor carrier industry and allow it to intervene earlier with more carriers to change unsafe behavior and practices. The ultimate goal is to achieve a greater reduction in large truck and bus crashes, injuries, and fatalities, while making efficient use of the resources of FMCSA and its State partners.

In contrast to the Agency's current operational model, CSA 2010 is characterized by three principal components:

(1) A more comprehensive carrier safety measurement system;

(2) A broader array of progressive interventions to augment comprehensive on-site investigations (compliance reviews), including warning letters, off-site investigations, and on-site focused investigations; and

(3) A new safety fitness determination (SFD) methodology based more on performance data and not necessarily tied to an on-site investigation. The third component, a new process pursuant to which FMCSA will formally propose and assign adverse SFDs—for example, unfit determinations and resulting prohibitions on operations—is the subject of a Notice of Proposed Rulemaking (NPRM) that will be published for comment at a later date during 2010.

This **Federal Register** notice addresses implementation of only the first component, a more comprehensive safety measurement system to identify and prioritize motor carriers for investigation. The new measurement system would be used to identify high-risk motor carriers for on-site investigations consistent with section 4138 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), [Sec. 4138, Pub. L. 109–59, 119 Stat. 1745 (49 U.S.C. 31144 note), August 10, 2005]. Furthermore, the new CSMS also would provide motor carriers and other safety stakeholders such as shippers with regularly updated safety performance assessments through a public Web site (*http://ai.fmcsa.dot.gov*).

FMCSA had originally planned to roll out CSA 2010 beginning in the summer of 2010. However, the Agency has received valuable feedback from its partners and stakeholders through CSA 2010 listening sessions and written comments to the CSA 2010 public docket referenced above. FMCSA has also gained valuable knowledge from its operational model test, involving nine States, which began in early 2008 and concludes in June 2010. Therefore, FMCSA has decided to move the beginning of CSA 2010 rollout from the summer to the fall of 2010. This will enable the Agency to incorporate comments and lessons learned into the CSA 2010 model prior to national rollout. Therefore, on November 30, 2010, FMCSA is planning on: (1) Replacing its current measurement system, SafeStat, with CSMS, (2) sending warning letters nationwide, and (3) implementing a revised nationwide Inspection Selection System for roadside inspectors that will be based on CSMS rather than SafeStat. The nine states currently operating in the operational model test will carry out the full array of CSA 2010 interventions after the test concludes in June 2010. These States are Colorado, Delaware, Georgia, Kansas, Maryland, Minnesota, Missouri, Montana, and New Jersey. For the remaining 41 States the new CSA 2010 interventions will be phased in during 2011. While the SFD rulemaking is in process, the Agency will continue to issue safety ratings in accordance with 49 CFR part 385—Safety Fitness Procedures.

Implementation of New Carrier Safety Measurement System (CSMS) To Replace SAFESTAT

SafeStat

The FMCSA's current operational model employs SafeStat to analyze the safety status of individual motor carriers in four analytic Safety Evaluation Areas (SEAs): (1) Accident, (2) Driver, (3) Vehicle and (4) Safety Management. The four SEA values are then combined into an overall safety status assessment, known as a SafeStat score. For a full description of the SafeStat methodology, visit the FMCSA Web site at: *http://ai.fmcsa.dot.gov.*

In 1997, FMSCA's predecessor Agency implemented SafeStat nationally as its primary tool for identifying high-risk and other motor carriers for compliance reviews. SafeStat results have also served as a prominent factor in roadside screening systems used by FMCSA and its State partners to identify motor carriers for increased inspection activity at the roadside.

In 1999, SafeStat data became available to the public on the FMCSA's Analysis and Information (A & I) online Web site *http://ai.fmcsa.dot.gov.* Motor

carriers, the insurance industry, shippers, safety advocates, and other interested parties began routinely accessing SafeStat data online for use in their own safety analysis and business decisions. In 2004, FMCSA removed public access to the Accident SEA due to problems with the completeness of crash data reported by the States at that time and because the raw crash data reported by the States generally do not include an indication of preventability or accountability. The remaining SafeStat data displayed at *http://ai.fmcsa.dot.gov* (Driver, Vehicle and Safety Management SEAs) continued to serve as a valuable source of information to motor carriers and other stakeholders. In fact, during calendar year 2009, the SafeStat online web site recorded nearly 4 million user sessions.

New CSMS

On November 30, 2010, FMCSA plans to replace SafeStat with the new CSMS. The new CSMS will work within the CSA 2010 operational model to monitor and quantify the safety performance of commercial motor carriers using data available in FMCSA's motor carrier database, the Motor Carrier Management Information System (MCMIS). Under CSA 2010, these data would include violations found during roadside inspections, traffic enforcement, and other types of interventions. The new CSMS groups these data into seven Behavioral Analysis Safety Improvement Categories (BASICs): Unsafe Driving, Fatigued Driving (Hours-of-Service), Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance, Cargo Related, and Crash History. FMCSA developed the BASICs under the premise that commercial motor vehicle (CMV) crashes can ultimately be traced to the behavior of motor carriers and drivers.

There are three important ways that the new CSMS is different from the Agency's current measurement system, SafeStat. The new CSMS:

1. Is organized by seven specific behavioral areas (BASICs), while SafeStat is organized into four broad SEAs;
2. Uses all safety-based inspection violations, while SafeStat uses only out-of-service violations and selected moving violations;
3. Uses risk-based violation weightings while SafeStat does not.

For further information on the new CSMS see the Safety Measurement System Methodology at *http://csa2010.fmcsa.dot.gov.*

When the new CSMS is implemented on November 30, 2010, motor carrier BASICs will be publicly displayed at *http://ai.fmcsa.dot.gov* in the same manner that the SEAs are displayed today under SafeStat. As discussed above, FMCSA removed public access to the Accident SEA on SafeStat because of problems with the completeness of State crash data at that time and because the data do not include information on preventability or accountability. FMCSA is currently conducting a feasibility study on using police accident reports to determine motor carrier crash accountability before the crash data are entered into CSMS. Until this analysis is completed, the Agency will continue to follow its current policy under SafeStat: the crash data will be displayed publicly, but the CSMS assessment of a motor carrier's crash history will not be publicly displayed.

Industry Preview

Since 2004, FMSCA has been actively consulting with, and preparing, the motor carrier industry and other safety stakeholders for implementation of CSA 2010 and the new CSMS to replace SafeStat. The Agency first held a series of public listening sessions on the broader overall CSA 2010 initiative and the new CSMS in September and October of 2004. These six sessions were designed to collect public input on ways that FMCSA could improve its process of monitoring and assessing the safety performance of the commercial motor carrier industry. A broad cross section of stakeholders, including industry executives, truck and bus drivers, insurance and safety advocacy groups, State and local government officials, and enforcement professionals participated in the sessions (Docket Number FMCSA–2004–18898). Following these initial public listening sessions, FMCSA held annual formal public listening sessions across the country between 2006 and 2008 to prepare the motor carrier industry and other stakeholders for CSA 2010 deployment and the new CSMS. Most recently, in December 2009, FMCSA held two webcasts that included over 3,000 participants. These can be viewed on the CSA 2010 Web site at *http://csa2010.fmcsa.dot.gov.* In all of these formal sessions, in addition to FMCSA's other proactive outreach activities, differences between SafeStat and the new CSMS were emphasized to prepare the motor carrier industry and other stakeholders for implementation of CSA 2010 and the new CSMS.

On April 12, 2010, FMCSA will undertake an additional step to prepare the motor carrier industry and other stakeholders for replacement of SafeStat with the new CSMS. FMCSA will provide individual motor carriers with a preview of their performance data at *http://csa2010.fmcsa.dot.gov,* sorted into the BASICs as it will be in the new CSMS. To view their data, motor carriers will have to enter their Personal Identification Number (PIN). Motor carriers that do not have a PIN, or those that have forgotten their PIN, can go to the following Web address for assistance: *https://li-public.fmcsa.dot.gov/LIVIEW/PKG_PIN_START.PRC_INTRO.* This preview in advance of CSMS implementation on November 30, 2010 will improve motor carrier safety by encouraging early action by carriers to correct and prevent violations, especially in areas that are not currently measured by SafeStat.

The FMCSA is currently considering refinements to the CSMS with regard to issues such as methods of measuring exposure, peer grouping, and violation severity weighting, based upon public comments received thus far and observations resulting from the CSA 2010 Operational Model Test. As a result, initially this preview will not provide motor carriers with an assessment of whether their performance in the BASICs is above FMCSA thresholds that warrant an intervention in the broader CSA 2010 Operational Model Test. Assessments will be added to the preview Web site after completion of the CSA 2010 Operational Model Test, and after any refinements are made to the CSMS during the summer of 2010 but before implementation on November 30, 2010. Thus, motor carriers will have approximately 7½ months to view their roadside violations data from the CSA 2010 perspective—mid-April through November 2010. For the first 3½ months—mid-April through July 2010—carriers will see their violations categorized by BASIC. Beginning in August, after the refinements to CSMS are complete, motor carriers will be able to see an assessment of their violations through CSA 2010. The purpose of this data preview period is to provide individual motor carriers with the opportunity to view their data from the CSA 2010 perspective, and to use the time to identify and take actions to correct deficiencies in their operations which are leading to unsafe behavior.

New CSMS for Identification of High-Risk Motor Carriers

In section 4138 of SAFETEA–LU Congress emphasized the importance of directing compliance review resources toward high-risk motor carriers as follows:

The [FMCSA] shall ensure that compliance reviews are completed on motor carriers that have demonstrated through performance data that they pose the highest safety risk. At a minimum, a compliance review shall be conducted whenever a motor carrier is rated as category A or B for 2 consecutive months.

The Conference Report for SAFETEA–LU further clarified Section 4138 as follows:

Senate Bill:

The Senate bill requires the Secretary to ensure that safety compliance reviews of motor carriers are completed for carriers that have demonstrated that they pose the highest safety risk. A single compliance review is required for any motor carrier that is rated as category A or B for two consecutive months.

Conference Substitute: The Conference adopts the Senate provision with a modification to clarify that multiple compliance reviews are not required for carriers that are rated as category A or B for more than two consecutive months.

H. Conf. Rpt. No. 109–203, at p. 1003 (2005).

The term "SafeStat" is not specifically mentioned in the statute or conference report. However, the SafeStat-related terminology, "*rated Category A or B*" is used. Although it does identify those motor carriers that "pose the highest safety risk" consistent with section 4138, the new CSMS is not designed to generate alphabetized lists of motor carrier safety performance categories. In FY 2009, the Committee on Appropriations, U.S. Senate, recognized in its report accompanying the Transportation, Housing and Urban Development, and Related Agencies Appropriations bill, 2009, that FMCSA is developing a new means to identify high-risk motor carriers and expressed support that the initiative will improve the Agency's performance:

As the Committee noted last year, the agency is undertaking a comprehensive overhaul of all of its systems in order to better target its resources on the riskiest carriers. The agency is also seeking ways to reach more carriers through its inspection efforts by employing interventions that are less resource intensive than a full-scale compliance review. The Committee agrees that the agency's systems and procedures for conducting oversight need to be dramatically improved, and hopes that this initiative will improve the agency's performance.

The Committee notes that the agency has already completed several tasks including the development of the Behavioral Analysis and Safety Improvement Categories [BASICs] for carriers and drivers. These will be important in identifying and targeting risky carriers for intervention.

S. Rep. No. 110–418, at p.88 (2008).

Beginning on November 30, 2010, FMCSA plans to implement the new CSMS to identify high-risk motor carriers and to meet the intent of SAFETEA–LU section 4138. The new CSMS effectively identifies as many high-risk motor carriers and more precisely identifies their specific performance problems than the current method. Furthermore, FMCSA operational policies will continue to require onsite investigations (i.e., compliance reviews) of these high-risk motor carriers. The FMCSA therefore believes that its planned action of implementing a more effective method of identifying high-risk motor carriers, and continuing to require on-site investigations of these motor carriers is fully consistent with section 4138 of SAFTEA–LU.

Comments

FMCSA requests comments on the above initiatives and the CSMS methodology, *http://csa2010.fmcsa.dot.gov.* Commenters are requested to provide supporting data wherever appropriate.

Issued on: April 6, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–8183 Filed 4–8–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on May 4, 2010 at 11:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 10 1–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: April 2, 2010.

Mary Miller,

Assistant Secretary (Financial Markets).

[FR Doc. 2010–8125 Filed 4–8–10; 8:45 am]

BILLING CODE 4810–25–M

Federal Register

Friday,
April 9, 2010

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 16; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 0808071078–0019–02]

RIN 0648–AW72

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 16

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

ACTION: Final rule.

SUMMARY: This final rule implements measures approved under Amendment 16 to the NE Multispecies Fishery Management Plan (FMP). Amendment 16 was developed by the New England Fishery Management Council (Council) as part of the biennial adjustment process in the FMP to update status determination criteria for all regulated NE multispecies or ocean pout stocks; to adopt rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing; and to revise management measures, including significant revisions to the sector management measures, necessary to end overfishing, rebuild overfished regulated NE multispecies and ocean pout stocks, and mitigate the adverse economic impacts of increased effort controls. This final rule also implements new requirements under Amendment 16 for establishing acceptable biological catch (ABC), annual catch limits (ACLs), and accountability measures (AMs) for each stock managed under the FMP, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Finally, this action adds Atlantic wolffish to the list of species managed by the FMP. This action is necessary to address the results of the most recent stock assessment, which indicate that several additional regulated species are overfished and subject to overfishing, and that stocks currently classified as overfished require additional reductions in fishing mortality to rebuild by the end of their rebuilding periods.

DATES: Effective at 0001 hr on May 1, 2010.

ADDRESSES: Copies of Amendment 16, its Regulatory Impact Review (RIR), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. NMFS prepared an Initial Regulatory Flexibility Act (IRFA) analysis, which was summarized in the Classification section of the proposed rule. The Final Regulatory Flexibility Act (FRFA) analysis consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide and the Record of Decision for the FEIS associated with this action are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298. The EIS/RIR/IRFA is also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone: 978–281–9141, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 (April 27, 2004; 69 FR 22906) established a biennial adjustment process whereby the Council would review the FMP and make any changes to management measures necessary to achieve the goals and objectives of the FMP. This adjustment process provides for an update of the scientific information regarding the status of the stocks, and an evaluation of the effectiveness of the regulations. The biennial review scheduled to occur in 2008, with necessary changes to the FMP to be implemented in 2009, included a peer-reviewed benchmark assessment and a review of the biological reference points (stock status determination criteria) for each stock. This benchmark assessment and review of the biological reference points (Groundfish Assessment Review Meeting (GARM III)) was also part of the adaptive rebuilding strategy described in Amendment 13 to the FMP, which sought to evaluate the more fundamental scientific information mid-way through the rebuilding period for most stocks.

GARM III, completed in August 2008, concluded that 11 stocks were still subject to overfishing (i.e., the fishing mortality rate (F) was above the F at maximum sustainable yield (MSY), or F_{MSY}), and that 11 stocks were overfished (i.e., biomass levels were less than one half of the biomass at MSY (B_{MSY})), with 9 stocks classified as both overfished and subject to overfishing. Further survey data for pollock that became available in January 2009 indicated that pollock is also overfished and subject to overfishing. GARM III also indicated that some stocks improved in status from the previous assessment, with Gulf of Maine (GOM) haddock and Georges Bank (GB) haddock classified as rebuilt in 2000 and 2006, respectively, and GOM cod expected to be rebuilt by 2009.

Amendment 16 was developed by the Council as part of the biennial adjustment process established in the FMP to update status determination criteria for all NE multispecies stocks; adopt rebuilding programs for groundfish stocks newly classified as being overfished and subject to overfishing; and revise management measures necessary to end overfishing, rebuild overfished groundfish stocks, and mitigate the adverse economic impacts of increased effort controls based upon the results of GARM III. In addition, Amendment 16 was developed to establish a mechanism to establish ACLs and AMs for each stock managed by the FMP, to comply with the Magnuson-Stevens Act.

The Council began development of Amendment 16 in 2006, with the intent of implementing any necessary revisions to management measures based upon the results of GARM III by the start of fishing year (FY) 2009 on May 1, 2009. A notice of intent to prepare a supplemental EIS and hold scoping meetings designed to solicit public input on any revisions to management measures was published in the **Federal Register** on November 6, 2006 (71 FR 64941). In September 2008, the Council agreed to postpone implementation of Amendment 16 until the start of FY 2010 on May 1, 2010, to provide additional time to further develop Amendment 16 measures, requesting that NMFS implement an interim action for FY 2009. A proposed rule to implement interim management measures published on January 16, 2009 (74 FR 2959), with final interim measures published on April 13, 2009 (74 FR 17030), and effective on May 1,

2009. The Council adopted draft Amendment 16 management measures and an associated draft EIS (DEIS) at its February 2009 meeting. A notice of availability for the DEIS published on April 24, 2009 (74 FR 18705), with public comments accepted through June 8, 2009. Final measures for Amendment 16 were adopted by the Council at its June 2009 meeting, with revisions to the discard provisions adopted at its September 2009 meeting. A notice of availability for Amendment 16 was published in the **Federal Register** on October 23, 2009 (74 FR 54773), with public comments accepted through December 22, 2009. A separate notice of availability for the Amendment 16 FEIS, as submitted by the Council for review by the Secretary of Commerce (Secretary), was published on October 30, 2009 (74 FR 56194). A proposed rule to implement measures in Amendment 16 was published on December 31, 2009 (74 FR 69382), with public comments accepted through January 20, 2010. The Amendment 16 proposed rule included a detailed description of the biennial adjustment process, the results of GARM III, the proposed management measures, and other factors that influenced the development of this action. A final decision to partially approve Amendment 16 was made on January 21, 2010.

Three separate, but related rulemakings associated with Amendment 16 have been published and, if approved, will be applicable to NE multispecies permit holders for FY 2010. The Amendment 16 proposed rule detailed rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing and proposed revisions to existing management measures necessary to end overfishing, rebuild overfished stocks, and mitigate adverse economic impacts of increased effort controls. That rule also proposed significant revisions to sector management measures. A second proposed rule (74 FR 68015, December 22, 2009) proposes FY 2010 operations plans and sector contracts for 17 sectors authorized by Amendment 16. A third proposed rule for Framework Adjustment (FW) 44 (75 FR 5016, February 1, 2010), proposed specifications of catch levels for FY 2010–2012, in accordance with the process approved in Amendment 16, and additional management measures to augment Amendment 16 measures.

The final rules for Amendment 16, sector operations, and FW 44 are closely related it is necessary to implement all three rules in order for Amendment 16 to be implemented in its entirety for FY 2010, as intended by the Council. This final rule implements approved management measures in Amendment 16; the sector operations rule would authorize the operation of sectors in FY 2010, and FW 44 would set catch levels according to approved measures in Amendment 16 for FY 2010–2012. As a result, these three rulemakings have been published nearly simultaneously. Approved measures in all three actions will become effective concurrently on May 1, 2010. Therefore, NMFS suggests that interested readers review all three final rules in order to fully understand the measures being implemented.

Disapproved Measures

GOM Haddock Sink Gillnet Pilot Program

This pilot program would have allowed all limited access NE multispecies vessels to target haddock in the GOM while using up to 30 stand-up sink gillnets (tie-down gillnets would have been prohibited) consisting of 6-inch (15.24-cm) mesh, a mesh size that is less than the minimum mesh size currently required, from January through April of each year. This pilot program would have expired after 2 years, unless otherwise renewed by the Council. The Amendment 16 FEIS and recent catch data suggest that this pilot program, implemented on a fishery-wide basis, could increase catch and, therefore, fishing mortality on GOM cod and pollock, stocks that require reductions in fishing mortality in order to rebuild under established rebuilding programs in the FMP, without substantially increasing the catch of haddock. Further, research used to support this pilot program concludes that further work must be done to reduce cod bycatch before a spring haddock gillnet fishery can be reestablished in the GOM and that, due to the low numbers of haddock caught in the study, the results of that research should not be used to support regulatory changes. Based upon this information, NMFS determined that the proposed pilot program is inconsistent with National Standards 1 and 9 of the Magnuson-Stevens Act because it could increase catch and fishing mortality, and may lead to excessive discards of overfished stocks of GOM cod and pollock. Moreover, it is inconsistent with the FMP provisions, including the special access program (SAP) provisions in Amendment 13; and Objectives 3 (constrain fishing mortality to levels compliant with the Sustainable Fisheries Act), 4 (prevent overfishing), and 10 (minimize bycatch) of the FMP. Therefore, NMFS disapproved this measure in this action.

Approved Measures

1. Incorporation of Atlantic Wolffish Into the FMP

Because this species was recently determined to be overfished and is occasionally caught by both the commercial and recreational NE multispecies fisheries, this action incorporates Atlantic wolffish into the FMP. Although the proposed rule indicated that the term "regulated species" would be revised to include large-mesh species, ocean pout, and Atlantic wolffish, this final rule revises that definition to only include large-mesh species and Atlantic wolffish, to accurately reflect that ocean pout will remain classified as a small-mesh species. Status determination criteria, a rebuilding plan, and management measures to rebuild this stock are also established through this action. Incorporation of this species into the FMP is consistent with section 304(e) of the Magnuson-Stevens Act, which requires the development of regulations to end overfishing and rebuild a stock within 2 years of notice that the fishery is overfished.

2. Status Determination Criteria

This final rule updates the status determination criteria (also known as biological reference points) for existing regulated species and ocean pout stocks based upon GARM III. Because this action adds Atlantic wolffish to the FMP, status determination criteria are also established for this species. Status determination criteria adopted by this action use F at 40 percent of maximum spawning potential (F40% MSP) as a proxy for F_{MSY} for most of the age-based stocks. Spawning stock biomasses at MSY (SSB_{MSY}) were calculated using F40% MSP, with an assumption on the recruitment that should occur at SSB_{MSY}. GARM III represents the best scientific information available, so these updated status determination criteria are consistent with National Standard 2 of the Magnuson-Stevens Act. Table 1 lists the approved status determination criteria, and numerical estimates of these parameters are listed in Table 2.

TABLE 1—APPROVED STATUS DETERMINATION CRITERIA

Species	Stock	Biomass target (B_{target})	Minimum biomass threshold	Maximum fishing mortality threshold
Cod	GB	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Cod	GOM	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Haddock	GB	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Haddock	GOM	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Yellowtail flounder	GB	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Yellowtail flounder	Southern New England (SNE)/Mid-Atlantic (MA).	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Yellowtail flounder	Cape Cod (CC)/GOM	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
American plaice		SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Witch flounder		SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Winter flounder	GB	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Winter flounder	GOM	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Winter flounder	SNE	SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Redfish		SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F50%MSP.
White hake		SSB_{MSY}:SSB/R (40% MSP)	½ B_{target}	F40%MSP.
Pollock		External	½ B_{target}	Relative F at replacement.
Windowpane flounder	Northern	External	½ B_{target}	Relative F at replacement.
Windowpane flounder	Southern	External	½ B_{target}	Relative F at replacement.
Ocean pout		External	½ B_{target}	Relative F at replacement.
Atlantic halibut		Internal	½ B_{target}	$F_{0.1}$.
Atlantic wolffish		SSB_{MSY}: SSB/R(40% MSP)	½ B_{target}	F40%MSP.

TABLE 2—NUMERICAL ESTIMATES FOR THE APPROVED STATUS DETERMINATION CRITERIA

Species	Stock	Biomass target (B_{target}) in mt	Minimum biomass threshold (½ B_{target}) in mt	Maximum fishing mortality threshold (F_{MSY} or proxy)	MSY in mt
Cod	GB	148,084	74,042	0.25	31,159
Cod	GOM	58,248	29,124	0.24	10,014
Haddock	GB	153,329	76,664	0.35	33,604
Haddock	GOM	5,900	2,950	0.43	1,360
Yellowtail flounder	GB	43,200	21,600	0.25	9,400
Yellowtail flounder	SNE/MA	27,400	13,700	0.25	6,100
Yellowtail flounder	CC/GOM	7,790	3,895	0.24	1,720
American plaice		21,940	10,970	0.19	4,011
Witch flounder		11,447	5,724	0.20	2,352
Winter flounder	GB	16,000	8,000	0.26	3,500
Winter flounder	GOM	3,792	1,896	0.28	917
Winter flounder	SNE	38,761	19,380	0.25	9,742
Redfish		271,000	135,500	0.04	10,139
White hake		56,254	28,127	0.13	5,800
Pollock *		2.00 kg/tow	1.00 kg/tow	5.65 c/i	11,320
Windowpane flounder *	Northern	1.4 kg/tow	0.7 kg/tow	0.50 c/i	700
Windowpane flounder *	Southern	0.34 kg/tow	0.17 kg/tow	1.47 c/i	500
Ocean pout *		4.94 kg/tow	2.47 kg/tow	0.76 c/i	3,754
Atlantic halibut		49,000	24,500	0.07	3,500
Atlantic wolffish		1,747–2,202	400–500	<0.35	278–311

* Estimates of F_{MSY} or proxy for these stocks use an index-based method to evaluate stock status and are based on a moving average, calculated as described in GARM III. Values represent catch (landings plus discards in 1,000's mt) per survey index of relative biomass (kg/tow) for that stock.

3. Rebuilding Programs

According to GARM III, two NE multispecies stocks have achieved their target biomass levels and are no longer considered overfished; the GB haddock stock was rebuilt in 2006, while GOM haddock was rebuilt in 2000. However, GARM III, and the subsequent data available for pollock, also indicated that several other NE multispecies stocks are now overfished; these stocks are witch flounder, GB winter flounder, northern windowpane flounder, and pollock. As a result, this action establishes rebuilding programs for these newly overfished stocks that begin in FY 2010. For witch flounder and GB winter flounder, the new rebuilding programs would rebuild these stocks by 2017, with a 75-percent probability of success. The rebuilding programs established for pollock and northern windowpane flounder would rebuild these stocks by 2017, but because status determination criteria for these stocks are based upon survey indices, a probability of success cannot be calculated at this time. Previous stock assessments for Atlantic halibut were insufficient to calculate a rebuilding F. As a result, although the stock was classified as overfished, no target F was calculated. GARM III included an analytic assessment for this species that was able to calculate a rebuilding F shown in Table 3 and an end date for rebuilding of 2055, based upon the biology of this species. Because the life history of Atlantic wolffish is not well understood, there is

considerable uncertainty in the evaluation of stock status and stock projections and a rebuilding period or a rebuilding F for this species at this time. Measures to reduce F for this stock are implemented by this action, as described below.

Based upon GARM III data, projections indicate that SNE/MA winter flounder is unlikely to rebuild by 2014 in the absence of any fishing mortality, but would likely rebuild between FYs 2015 and 2016. Since this stock is caught as non-targeted catch in other large-mesh fisheries, small-mesh fisheries, and the scallop dredge fishery, the only way to achieve zero F would be to eliminate all fishing activity in the SNE/MA winter flounder stock area, including fisheries for scallops, summer flounder, and other non-groundfish species, resulting in substantial adverse economic impacts to affected entities and associated fishing communities. Instead, this action prohibits possession and landings of SNE/MA winter flounder by all vessels and requires all non-sector vessels fishing within two restricted gear areas to use selective gear to minimize the catch of SNE/MA winter flounder and other stocks. These measures are expected to result in achieving an F as close to zero as practicable, eliminate overfishing on this stock, and facilitate the rebuilding of this stock by FY 2015 or 2016. Projections of stock status under an F of zero are similar to those using an F of as close to zero as practicable, as implemented by this action, indicating that there is little difference between when this stock is expected to rebuild under either scenario (see Section 7.2.1.1.3.1 of the Amendment 16 FEIS). Therefore, to impose a complete closure of commercial and recreational fisheries in the SNE/MA winter flounder stock area and still not achieve the objectives of rebuilding this stock by 2014 is contrary to the objectives of the Magnuson-Stevens Act and would result in severe economic impacts without biological benefits. Pursuant to section 304(e)(7) of the Magnuson-Stevens Act which recognizes that an FMP may not always make adequate progress to achieving rebuilding objectives and allows time for revisions to be made to make adequate progress toward rebuilding overfished stocks, this action eliminates targeting of this stock to reduce F to the extent practicable, without delaying the projected rebuilding of this stock.

The GARM III review of GOM winter flounder indicated that it is highly likely that the stock is overfished. However, due to the high degree of uncertainty of the assessment, the GARM III review panel suggested that the assessment could not be used to provide management advice or stock projections. As a result, a formal rebuilding program has not been developed for this stock under Amendment 16, although rebuilding for this stock is expected to result from measures proposed under Amendment 16 to rebuild other stocks. This stock will continue to be monitored and, should additional information lead to a determination that the stock is overfished, a formal rebuilding program would be developed in a subsequent action.

4. ABC Control Rule and Mortality Reductions Necessary to Achieve Rebuilding Targets

The mortality reductions used to design management measures implemented by this final rule are listed in Table 3. These mortality reductions were determined based upon the ABC control rule specified by the Council's Scientific and Statistical Committee (SSC) and the F necessary to rebuild overfished stocks within the rebuilding period ($F_{rebuild}$). The ABC control rule proposed by the SSC and established through this action replaces the MSY control rule that was added to the FMP by Amendment 13. The ABC control rule specifies that the ABC for each stock would be determined as the catch at 75 percent of F_{MSY}, and that, if the catch at 75 percent of F_{MSY} would not achieve the mandated rebuilding requirements, ABC would be based upon $F_{rebuild}$. For stocks that cannot be rebuilt within existing rebuilding periods, the ABC would be based upon incidental bycatch, including a reduction in the existing bycatch rate. Finally, for stocks with unknown status, ABC would be determined on a case-by-case basis by the SSC. Table 3 lists the percentage change in F necessary to achieve the target F (either $F_{rebuild}$ or the catch at 75 percent of F_{MSY}), as appropriate, from F estimated for FY 2008. Mortality reductions for several stocks are not available because the assessments for these stocks did not produce reliable estimates of F that could be used in projection models to estimate $F_{rebuild}$.

TABLE 3—SUMMARY OF REDUCTIONS IN F NECESSARY TO ACHIEVE THE TARGET F IN 2010 FOR EACH STOCK

Species	Stock	2007 F	Targeted F (either $F_{rebuild}$ or 75% of F_{MSY})	F_{msy}	2008 F from 2008 catch data	% Change in F necessary to achieve $F_{rebuild}$ using catch and F 2008
Cod	GB	0.300	0.184	0.2466	0.410	−55%
Cod	GOM	0.456	0.18	0.237	0.300	−40%
Haddock	GB	0.230	0.26	0.350	0.079	229%
Haddock	GOM	0.350	0.32	0.430	0.250	28%
Yellowtail flounder	GB	0.289	0.109	0.254	0.130	−16%
Yellowtail flounder	SNE/MA	0.413	0.072	0.254	0.120	−40%
Yellowtail flounder	CC/GOM	0.414	0.18	0.239	0.289	−38%
American plaice	GB/GOM	0.090	0.14	0.190	0.099	41%
Witch flounder		0.290	0.15	0.200	0.296	−49%
Winter flounder	GB	0.280	0.20	0.260	0.131	49%
Winter flounder	GOM	0.417	N/A	0.283	0.317	N/A
Winter flounder	SNE/MA	0.649	0.000	0.248	0.265	−100%
Redfish		0.005	0.03	0.038	0.008	275%
White hake	GB/GOM	0.150	0.084	0.125	0.065	29%
Pollock	GB/GOM	10.464	4.245	5.66	15.516	−73%
Windowpane flounder	Northern	1.960	N/A	0.50	N/A	N/A
Windowpane flounder	Southern	1.850	N/A	1.47	N/A	N/A
Ocean pout		0.380	N/A	0.760	N/A	N/A
Atlantic halibut		0.065	0.044	0.073	0.060	−27%

TABLE 3—SUMMARY OF REDUCTIONS IN F NECESSARY TO ACHIEVE THE TARGET F IN 2010 FOR EACH STOCK—Continued

Species	Stock	2007 F	Targeted F (either $F_{rebuild}$ or 75% of F_{MSY})	F_{msy}	2008 F from 2008 catch data	% Change in F necessary to achieve $F_{rebuild}$ using catch and F 2008
Atlantic wolffish		N/A	N/A	N/A	N/A	N/A

5. ABC/ACL Specifications and Distribution Process

The recent reauthorization of the Magnuson-Stevens Act required fishery management councils to establish a mechanism for specifying ACLs for each managed fishery such that overfishing does not occur in the fishery, and measures to ensure accountability. The Magnuson-Stevens Act requires that ACLs must take effect in FY 2010 for fisheries subject to overfishing, and in FY 2011 for all other fisheries. Because several stocks managed under the FMP are subject to overfishing, this final rule establishes a process to specify ABCs and ACLs for the NE multispecies fishery for implementation in FY 2010, to comply with new requirements of the Magnuson-Stevens Act, based upon the National Standard 1 Guidelines published in the **Federal Register** (January 16, 2009; 74 FR 3178).

ABC/ACL Specifications Process

This action approves the ABCs/ACL specification process described in Section 4.2.1 of the Amendment 16 FEIS. The Groundfish Plan Development Team (PDT) is required to develop recommendations for setting an ABC, ACL, and overfishing level (OFL) for each stock for each of the next 3 years following the implementation of the biennial adjustment, or yearly for stocks managed by the U.S./Canada Resource Sharing Understanding (Understanding) (currently, GB yellowtail flounder, Eastern GB cod, and Eastern GB haddock) through a specifications package. These recommendations will be based upon the ABC control rule, as described above; updated information regarding the status of each stock, including $F_{rebuild}$ for overfished stocks; recommendations of the Transboundary Management Guidance Committee (TMGC) for appropriate catch levels for stocks managed by the Understanding; and any other guidance provided by the SSC. The ABCs developed through the process will be distributed among the various segments of the fishery that catch NE multispecies. These sub-ABCs will then be reduced to account for management uncertainty to derive how the overall ACL for each stock is divided into various sub-components of the fishery, as described further below. The PDT will develop an informal document that describes how these recommendations were developed, including estimates of scientific and management uncertainty considered by the PDT, whether different levels of management uncertainty were applied to different components of the fishery, and whether total allowable catches (TACs) have been exceeded during previous FYs. The SSC will then approve the PDT's ABC recommendations, or provide alternative ABC recommendations, describing elements of scientific uncertainty used to develop its recommendations, and offer any other recommendations regarding ACLs or other relevant issues. The Council will then consider the recommendations of the SSC, PDT, and TMGC, and adopt ABCs and ACLs for each stock. As required by the Magnuson-Stevens Act, the Council must adopt ACLs that are equal to or lower than the ABC recommended by the SSC, taking into account management uncertainty. The Council will adopt the ABC/ACL specifications and submit them to NMFS by December 1, for approval and implementation for the following FY in a manner consistent with the Administrative Procedure Act.

As stated above, the actual ABCs and ACLs that result from the process established in this action were adopted by the Council at its November 2009 meeting as part of FW 44. If approved, measures in FW 44 would become effective on May 1, 2010, at the same time as measures implemented through this final action. The ABCs and ACLs for FY 2013 and beyond would be specified according to the process described above, unless otherwise modified through a future Council action.

ACL Distribution

This action also approves the process to distribute ACLs among various segments of the fishery that catch regulated species and ocean pout in Amendment 16. The PDT will recommend distributing the ABC among various segments of the fishery and reducing such sub-ABCs to account for management uncertainty for each individual sub-component of the fishery based upon the catch available to U.S. fishermen. These sub-components of the fishery include vessels operating in state waters that catch regulated species and ocean pout, but do not hold Federal NE multispecies permits; other non-specified sub-components of the fishery that may catch regulated species and ocean pout as bycatch when prosecuting other fisheries (i.e., exempted fisheries and fisheries for exempted species); vessels participating in the Atlantic sea scallop fishery that catch yellowtail flounder stocks as bycatch; vessels participating in the Atlantic herring fishery that catch haddock as bycatch; and catch of regulated species and ocean pout by the commercial and recreational NE multispecies fisheries. Some sub-components of the fishery will not be subject to any automatic AMs under Amendment 16 and will, thus, be allocated sub-components of the ACL. The sub-components of the fishery that are subject to AMs will be allocated sub-ACLs for each stock of regulated species and ocean pout that they catch. These distributions, and the stocks that are allocated to the recreational fishery, can be revised through the framework adjustment process established in the existing regulations.

The sub-components of the fishery that are not subject to AMs include vessels fishing in exempted fisheries that occur in Federal waters (e.g., the northern shrimp exempted fishery and the Cultivator Shoal whiting fishery exemption) and vessels targeting exempted species (e.g., the summer flounder fishery in SNE)—fisheries that are not allowed to land regulated species or ocean pout and that have demonstrated very low NE multispecies bycatch—as well as the Atlantic sea scallop fishery, which catches yellowtail flounder as bycatch. If catch from such fisheries exceeds the amount allocated, AMs would be developed and implemented in a separate future management action to prevent the

overall ACL for each stock from being exceeded, pursuant to the biennial review, or framework adjustment process in the FMP.

The ACLs for all three stocks of yellowtail flounder will be reduced to account for projected yellowtail flounder bycatch in the Atlantic sea scallop fishery. The level of yellowtail flounder bycatch in the scallop fishery would vary from year-to-year, based upon scallop and NE multispecies abundance, the rotational management program specified for the scallop fishery, and other factors. At a minimum, the yellowtail flounder sub-component of the ACL allocated to the scallop fishery would be consistent with the incidental catch amounts for closed area access programs specified in the current regulations (e.g., at least 10 percent of the GB yellowtail flounder ACL would be specified to account for closed area access programs on GB, when open under the rotational management program). With the exception of GB yellowtail flounder, yellowtail flounder bycatch in the scallop fishery will initially be treated as a sub-component of the ACL, rather than a sub-ACL, and, therefore, will not be subject to any specific AMs under this action. However, the Council is currently developing Amendment 15 to the Atlantic Sea Scallop FMP that is expected to establish yellowtail flounder AMs for the scallop fishery by FY 2011. The existing regulations regarding the Understanding require that any overages of the TACs managed by the Understanding be deducted from the available U.S. portion of the appropriate TAC during the following FY. Therefore, any overages of the U.S. portion of the GB yellowtail flounder TAC, including those by the scallop fishery, will be deducted from the U.S. portion of the GB yellowtail flounder TAC during the following FY.

This final rule clarifies that the allocation of GOM and GB haddock to the Atlantic herring fishery through FW 43 to the FMP (August 15, 2006; 71 FR 46871) reflects 0.2 percent of the GOM and GB haddock ACL. This allocation is considered a sub-ACL because the regulations implementing FW 43 already contain AMs in the form of elimination of the directed herring fishery in particular areas, and haddock possession restrictions, once this sub-ACL is projected to be caught. Because the existing regulations combine catches from both stocks of haddock, the haddock sub-ACL allocated to the herring fishery is not currently monitored on a stock-specific basis.

Finally, this action allocates the remaining ACL for each regulated species and ocean pout stock to the NE multispecies commercial and recreational fisheries. With the exception of GOM cod and GOM haddock, the remaining ACL for each regulated species and ocean pout stock will be allocated to the commercial NE multispecies fishery. This is then further divided between vessels participating in approved sectors and those fishing under the provisions for the common pool (i.e., those vessels not participating in an approved sector), as described further in Item 14 of this preamble. An allocation for a particular stock would not be made to the recreational fishery if it is determined that, based upon available information, the ACLs for regulated species and ocean pout stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state-waters catch is less than 5 percent of the overall catch for a particular stock. If a stock is allocated to the recreational fishery, the distribution of the available ACLs for these stocks between the commercial and recreational fisheries will be determined based upon the average proportional catch of each component for each stock during FYs 2001 through 2006. Beginning in FY 2010, only two NE multispecies stocks will be allocated to the recreational fishery: GOM cod and GOM haddock. For GOM cod and GOM haddock, state-waters catch will be deducted from the sub-ACL available to the commercial fishery (i.e., vessels issued a limited access NE multispecies permit or open access NE multispecies Handgear B permit). The sub-ACL available to recreational vessels would include catch of GOM cod and GOM haddock in both state waters and Federal waters, and any associated recreational AMs would be triggered by the cumulative catch of such stocks by all recreational vessels.

6. AMs

This action establishes AMs for both the commercial and recreational fisheries, as described in Amendment 16 and summarized below, including separate AMs for sector vessels, vessels fishing in the common pool, and private recreational and charter/party vessels. Under this action, if the overall ACL for a stock is exceeded, the AMs applicable to the NE multispecies fishery, including those specified for sector, common pool, and recreational and charter/party vessels, will be triggered, as specified below. These measures are required to comply with new requirements of the Magnuson-Stevens Act and reflect the spectrum of AMs recognized in the National Standard 1 Guidelines.

Sector AMs

This final rule prohibits sector vessels from fishing in a particular stock area unless that sector is allocated, or acquires, quota for all regulated species or ocean pout stocks allocated to sectors and caught in that stock area. In addition, this action requires that sector vessels cease fishing in a particular stock area if the sector exceeds its allocation of any regulated species or ocean pout stocks caught in a particular stock area. Any overages at the end of the FY would be deducted from that sector's allocation during the subsequent FY, after considering any transfers of quota from another sector. As described below for the AMs effective if the overall ACL for a particular stock is exceeded, the catch used to determine an individual sector's overage includes catch by each sector's vessels, as well as catch by other sub-components of the fishery. If either the catch of a particular stock by a sector's vessels alone, or the catch of a particular stock by a sector's vessels added to a sector's portion of the overall ACL overage caught by other sub-components of the fishery exceeds the amount of that stock's ACL allocated to an individual sector, the amount of the overage will be deducted from that sector's allocation for that stock during the following FY. If a sector disbands following an overage, or does not have sufficient allocation to cover the overage, an appropriate DAS or sector share penalty or fishing prohibition will apply to each individual participating vessel during the subsequent FY, as further described in Item 14 of this preamble. If a sector exceeds its allocations multiple times or by a large amount, the sector operations plan or monitoring program may be insufficient to control fishing effort and could justify disapproval of the sector in future years. These measures are intended to ensure that sectors avoid exceeding their allocations and help prevent overfishing for each managed stock.

Common Pool AMs

This action approves two types of AMs for the common pool: A differential DAS counting AM during FYs 2010 and 2011, and a hard-TAC AM overlaid upon the DAS effort controls in FYs 2012 and beyond. This reflects the Council's intent to transition from an effort control fishery to one managed through hard TACs. This transition also enables monitoring systems and service providers to prepare for the increase in infrastructure and personnel necessary

to accommodate the influx of higher volumes of catch data and the need to monitor greater numbers of offloads, as further described below.

Under the differential DAS counting AM, if the NMFS Regional Administrator projects that the sub-ACL available to common pool vessels for each regulated species or ocean pout stock would be exceeded or underharvested by the end of the FY based upon catch data available through January of that year, a differential DAS counting factor would be applied to each Category A DAS used in the stock area for which the sub-ACL was exceeded or underharvested, during the following FY. The catch used in this projection includes catch by common pool vessels as well as a projection of the catch by other sub-components of the fishery. If either the catch of a particular stock by common pool vessels alone, or the catch of a particular stock by common pool vessels plus the common pool's portion of any catch from other sub-components of the fishery that is projected to exceed the overall ACL for a particular stock, is projected to exceed the common pool's allocation for a particular stock, the differential DAS counting AM would be triggered for the following FY. This projection will be updated after the end of the FY to help determine if the catch by other sub-components of the fishery are accurately estimated for the purposes of determining whether the differential DAS counting AM is triggered. The areas in which differential DAS counting apply are defined further in this final rule.

The differential DAS counting factor that will apply to common pool vessels under this AM is based upon the projected proportion of the sub-ACL that is expected to be caught by common pool vessels plus the common pool's portion of any overage of the overall ACL for any stock caused by other sub-components of the fishery, if appropriate, rounded to the nearest even tenth, as listed in Table 4. If it is projected that catch in a particular FY will exceed or underharvest the sub-ACLs for several regulated species or ocean pout stocks within a particular stock area, the Regional Administrator will apply the most restrictive differential DAS counting factor within that particular stock area. For example, if it were projected that common pool vessels will be responsible for catch that is 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator will apply a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Stock Area during the following FY (i.e., Category A DAS would be charged at a rate of 28.8 hr for every 24 hr fished, or 1.2 times 24-hr DAS counting). If it is projected that common pool vessels will underharvest all stocks within a particular stock area by at least 10 percent, and that the overall ACL for a particular stock is not exceeded by all sub-components of the fishery, the Regional Administrator will reduce the rate at which DAS are counted to allow the fishery to achieve the ACLs for all stocks within that area. For example, if the common pool catches 0.65 times the CC/GOM yellowtail flounder sub-ACL and 0.80 times the sub-ACL for all other stocks within the Inshore GOM Differential DAS Counting Area, the Regional Administrator will apply a differential DAS factor of 0.80 to all Category A DAS used only in the Inshore GOM Differential DAS Counting Area during the following FY (i.e., Category A DAS would be charged at a rate of 19.2 hr for every 24 hr fished, or 0.80 times 24-hr DAS counting). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas (either to reduce or to increase effort), the Regional Administrator will adjust the ratio of Category A: Category B DAS to reduce/increase the number of Category A DAS available, based upon the amount of the overage or underage, rather than applying a differential DAS counting factor to all Category A DAS used in all stock areas. Any differential DAS counting factor implemented in FY 2012 for any ACL overages in a particular stock area during FY 2011 will be applied against the DAS counting rate implemented in that stock area for FY 2011. This is necessary to ensure that the differential DAS counting rate applied during FY 2012 is sufficient to prevent the ACLs specified for FY 2012 from being exceeded if the differential DAS counting rate applied in FY 2011 was insufficient to control catch during that FY. For example, if a projection by the Regional Administrator concluded that 1.2 times the GOM cod ACL was caught during FY 2010, a differential DAS factor of 1.2 would be applied to any Category A DAS used in the Inshore GOM Stock Area during FY 2011 (i.e., Category A DAS would be charged at a rate of 28.8 hr for every 24 hr fished, or 1.2 times 24-hr DAS counting). However, if even this higher DAS counting rate were insufficient to prevent the GOM cod ACL from being exceeded again in FY 2011 and 1.5 times the GOM cod ACL was caught during FY 2011, a differential DAS factor of 1.5 would be applied to the DAS charging rate during FY 2011 (i.e., Category A DAS would be charged at a rate of 43.2 hr for every 24 hr fished (1.2 × 1.5 × 24-hr DAS charge)) for FY 2012. This more accurately reflects the likely reduction in effort needed to prevent overfishing from occurring, and increase the likelihood that catch during FY 2012 would not exceed the ACL in that stock area and result in the trimester TAC area closures being triggered.

TABLE 4—DIFFERENTIAL DAS FACTOR APPLIED AS AN ACCOUNTABILITY MEASURE DURING FYS 2010/2011

Proportion of ACL caught	Differential DAS factor
0.5	0.5
0.6	0.6
0.7	0.7
0.8	0.8
0.9	No change.
1.0	No change.
1.1	1.1
1.2	1.2
1.3	1.3
1.4	1.4
1.5	1.5
1.6	1.6
1.7	1.7
1.8	1.8
1.9	1.9
2.0	2.0

Starting in FY 2012, common pool vessels will be subject to a hard-TAC AM. Under this AM, the sub-ACL available to common pool vessels for each regulated species or ocean pout stock will be apportioned into trimesters of 4 months duration, beginning at the start of the FY (i.e., Trimester 1: May 1—August 31; Trimester 2: September 1—December 31; Trimester 3: January 1—April 30), as listed in Table 5. The distribution of these sub-ACLs into trimesters was based upon a preferred distribution of recent landing patterns, but would be adjusted through the biennial adjustment process to reflect the landing patterns of the most recent 5-yr period available at the time of each adjustment. If a trimester TAC is exceeded/underharvested, the overage/underage will be applied to the following trimester, with the exception that any underage could not be applied to the following FY's trimester TACs. With the exception of windowpane flounder, ocean pout, and Atlantic halibut, if the Regional Administrator projects that 90 percent of the trimester TAC for a regulated species or ocean pout stock will be caught, the Regional Administrator shall close the area where the stock is predominantly caught to all NE multispecies common pool vessels

using gear capable of catching that species, as listed in Table 6, for the remainder of that trimester. The areas to be closed to particular gears are further described in this final rule, and are based upon the area that accounted for 90 percent of the catch of each stock according to available vessel trip report (VTR) data for calendar years 2006 through 2008. These areas differ slightly from those originally described in the Amendment 16 DEIS, as discussed further in Section 4.3.7.1.2 of the Amendment 16 FEIS. The Regional Administrator has the authority to expand or narrow the closure areas based upon additional catch information to reflect where each stock is actually caught. If the entire common pool sub-ACL for a particular stock is exceeded (i.e., the common pool catch of that stock at the end of the FY exceeds all three trimester TACs for that stock combined, including the common pool's share of any overage of the overall ACL for a particular stock caused by excessive catch of that stock by vessels fishing in state waters outside of the FMP, exempted fisheries, or the scallop fishery), an amount equal to the overage will be deducted from the sub-ACL for that stock that is allocated to common pool vessels during the following year. Because a targeted fishery for windowpane flounder, ocean pout, and Atlantic halibut is eliminated by the restrictive trip limits approved by this action (i.e., a prohibition on the retention of these stocks, or, in the case of halibut, a one-fish-per-trip restriction), the catch of these stocks will be monitored for the purposes of deducting overages, but will not trigger an area closure. Although particular areas will not close when these trimester TACs for these stocks are harvested, trip limits may be adjusted for these stocks to prevent overfishing in future years once the stock rebuilds and the fishery can once again target these stocks. Once 60 percent of the trimester TAC for any of these stocks is projected to be caught, the Regional Administrator has the authority to specify a trip limit to prevent the trimester TAC or sub-ACL allocated to the common pool vessels from being exceeded. Beginning in FY 2012, the white hake trip limit will be reduced to 500 lb (227 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.

TABLE 5—PORTION OF COMMON POOL ACLS APPORTIONED TO EACH TRIMESTER UNDER THE COMMON POOL TRIMESTER TAC AM

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM cod	27	36	37
GB cod	25	37	38
GOM haddock	27	26	47
GB haddock	27	33	40
CC/GOM yellowtail flounder	35	35	30
GB yellowtail flounder	19	30	52
SNE/MA yellowtail flounder	21	37	42
GOM winter flounder	37	38	25
GB winter flounder	8	24	69
SNE/MA winter flounder	36	50	14
Witch flounder	27	31	42
American plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44
White hake	38	31	31
Northern windowpane flounder	33	33	34
Southern windowpane flounder	33	33	34
Ocean pout	33	33	34
Atlantic halibut	33	33	34
Atlantic wolffish	75	13	12

TABLE 6—GEAR/AREA PROHIBITIONS UNDER THE COMMON POOL TRIMESTER TAC AM

Species	Stock	Area/gear prohibited when TAC is caught	
		Statistical areas	Gear
Cod	GB	521, 522, 525, 526, 561	Trawl, gillnet, longline/hook.
	GOM	513, 514, 515	Trawl, gillnet, longline/hook.
Haddock	GB	521, 522, 561	Trawl, gillnet, longline/hook.
	GOM	512, 513, 514, 515	Trawl, gillnet, longline/hook.
Yellowtail flounder	GB	522, 525, 561, 562	Trawl, gillnet.
	SNE/MA	537, 539, 612, 613	Trawl, gillnet.
	CC/GOM	514, 521	Trawl, gillnet.
American plaice		512, 513, 514, 515, 521, 522	Trawl.
Witch flounder		512, 513, 514, 515, 521, 522	Trawl.
Winter flounder	GB	522, 562	Trawl.
	GOM	514	Trawl, gillnet.
	SNE/MA	521, 526, 537, 539, 612, 613	Trawl.
Redfish		513, 514, 515, 521, 522, 561	Trawl.
White hake		511, 512, 513, 514, 515, 521, 522, 525, 561, 613, 616.	Trawl, gillnet, longline/hook.
Pollock		513, 514, 515, 521, 522, 561	Gillnet, trawl, longline/hook.
Atlantic wolffish		513, 514, 521, 522	Trawl, gillnet.

To facilitate monitoring trimester TACs under the common pool trimester TAC AM beginning in FY 2012, 20 percent of trips by common pool vessels will have their offloads monitored by an independent third-party service provider approved/certified by NMFS to provide such services. These service providers are required to randomly deploy dockside monitors to monitor the offload of catch directly to a dealer, and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. To ensure coverage is randomly deployed, common pool vessels may only use one dockside monitoring service provider per fishing year. The costs associated with monitoring vessel offloads are the responsibility of individual vessels. Vessels are required to submit trip-start and trip-end hail reports to facilitate the deployment of such dockside/roving monitors, as further described in Item 14 of this preamble.

Recreational AMs

For the recreational fishery, once recreational catch information is available for the previous FY (expected by July), the Regional Administrator will evaluate whether recreational catch exceeded the recreational allocation for GOM cod or GOM haddock. For FY 2010, recreational catch will be compared to the recreational ACL for each stock for FY 2010. For FY 2011, the average recreational catch for FYs 2010 and 2011 will be compared to the average recreational ACL for each stock during FYs 2010 and 2011. Beginning with FY 2012, the 3-year average recreational catch will be compared to the most recent 3-year average of the recreational ACL for each stock. If it is determined that the recreational fishery has exceeded its allocation for GOM cod or haddock, NMFS will develop and implement appropriate measures necessary to prevent the recreational fishery from exceeding the applicable sub-ACL in future years, in consultation with the Council. Appropriate AMs for the recreational fishery will include adjustments to fishing season, minimum fish size, and/or possession limits.

AMs If an Overall ACL for a Particular Stock Is Exceeded

The National Standard 1 Guidelines state that AMs must be sufficient to prevent overfishing on each stock as a whole. This action implements the Amendment 16 provision that specified that the AMs applicable to the NE multispecies fishery must be sufficient to prevent overfishing on each stock by all components of the fishery that catch regulated species and ocean pout, including catch by components of the fishery that are not subject to AMs at this time (i.e., vessels fishing in state waters outside of the FMP, exempted fisheries, and the scallop fishery). If these later components exceed their allocations, and the overall ACL for a particular stock is exceeded, the AMs applicable to the NE multispecies fishery described above, including those specified for sector, common pool, and recreational and charter/party vessels, could be triggered to ensure that overfishing does not occur on the stock as a whole. Because catch data for components of the fishery that are not subject to AMs are not always available either within the FY, or at the end of the FY, NMFS will implement or adjust any AMs applicable to the NE multispecies fishery during the next FY, or as soon as practicable thereafter, once catch data for all such fisheries are available. If excessive catch by vessels fishing in state waters outside the FMP, exempted fisheries, or the scallop fishery exceeds these fisheries' individual allocations for a particular stock, but the overall ACL for a particular stock is not exceeded, then no AMs would be triggered in the NE multispecies fishery due to catch by such fisheries. However, if an individual component of the NE multispecies fishery subject to a sub-ACL exceeds its allocation of a particular stock, then the applicable AM for that component of the fishery will be triggered, even if the overall ACL for that stock is not exceeded.

The amount of the overage caused by excessive catch by other sub-components of the fishery will be divided among the entire NE multispecies fishery, including common pool vessels, approved sectors, and private recreational and charter/party vessels, based upon each component's share of that stock's ACL available to the NE multispecies fishery for the applicable FY. Each component's share of the ACL overage for a particular stock will then be added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If it does, that component will automatically be subject to the applicable AM. For example, if in FY 2010, there is an overall ACL of 1,000 mt of CC/GOM yellowtail flounder allocated across all fisheries, 5 percent of the 1,000 mt (50 mt) would be allocated to vessels fishing in state waters outside the FMP, exempted fisheries, and the Atlantic sea scallop fishery, while the remaining 95 percent (950 mt) would be allocated to the NE multispecies fishery. The 950 mt allocated to the NE multispecies fishery would be further divided between common pool vessels (allocated 200 mt), Sector 1 (allocated 450 mt), and Sector 2 (allocated 300 mt). Suppose also that, in FY 2010, vessels fishing in state waters outside the FMP, exempted fisheries, and the scallop fishery cumulatively catch 300 mt of CC/GOM yellowtail flounder, exceeding their allocation by 250 mt (i.e., 300 mt caught—50 mt allocated), and components of the NE multispecies fishery each caught less than or equal to their allocations for this stock, with common pool vessels catching 150 mt, Sector 1 vessels catching 450 mt, and Sector 2 vessels catching 300 mt, and cumulatively, the overall ACL for CC/GOM yellowtail flounder was exceeded by 200 mt based upon the catch of all fisheries (see Table 7 below). To determine how to distribute the overage of the overall ACL among the components of the NE multispecies fishery, it would be necessary to first determine each component's share of that stock's ACL that is available to the NE multispecies fishery by dividing each component's allocation for that stock (i.e., 200 mt to common pool vessels, 450 mt to Sector 1 vessels, and 300 mt to Sector 2 vessels) by the total amount allocated to the NE multispecies fishery (200 mt + 450 mt + 300 mt = 950 mt). In this example, the common pool is allocated 21 percent of the CC/GOM yellowtail flounder sub-ACL available to NE multispecies vessels (200 mt ÷ 950 mt), while Sector 1 is allocated 47 percent (450 mt ÷ 950 mt), and Sector 2 is allocated 32 percent of the CC/GOM yellowtail flounder sub-ACL available to NE multispecies vessels (300 mt ÷ 950 mt). Therefore, to determine whether the common pool and sector AMs would be triggered, 42 mt of the overage (21 percent times 200 mt overage) would be added to the actual common pool catch (150 mt), 94 mt of the overage (47 percent times the 200 mt overage) would be added to the actual catch by Sector 1 vessels (450 mt), and 64 mt of the overage (32 percent times the 200 mt overage) would be added to the actual catch by Sector 2 vessels of (300 mt). In this example, because vessels in both Sector 1 and Sector 2 caught their full allocation of CC/GOM yellowtail flounder, when the overage of the overall ACL was proportionally distributed among the components of the NE multispecies fishery, the total catch of CC/GOM yellowtail flounder by Sector 1 vessels exceeded its CC/GOM

yellowtail flounder allocation by 94 mt (i.e., 450 mt catch by Sector 1 vessels + 94 mt share of the overage = 544 mt, or a 94 mt overage of its allocation), while the total catch of CC/GOM yellowtail flounder by Sector 2 vessels exceeded its CC/GOM yellowtail flounder allocation by 64 mt (i.e., 300 mt catch by Sector 2 vessels + 64 mt share of the overage = 364 mt, or a 64 mt overage of its allocation). Accordingly, the AMs for both sectors would be triggered, resulting in Sector 1's CC/GOM yellowtail flounder allocation being reduced by 94 mt, and Sector 2's CC/GOM yellowtail flounder allocation being reduced by 64 mt during FY 2011. However, if the common pool's share of the overage of the overall ACL (42 mt) is added to the common pool's catch of CC/GOM yellowtail flounder (150 mt), the total catch did not exceed the CC/GOM yellowtail flounder allocation to the common pool (42 mt + 150 mt < 200 mt), the common pool would not be subject to the differential DAS counting AM in FY 2011 (see Table 7 below).

TABLE 7—EXAMPLE OF HOW AMS APPLY IF THE OVERALL ACL FOR A STOCK IS EXCEEDED BY OTHER SUB-COMPONENTS OF THE FISHERY

Component of the fishery	Share of ACL (%)	Amount of sub-ACL (mt)	Share of mults ACL (%)	Catch in FY 2010 (mt)	Overage (mt)	Distribution of exempted fisheries and scallop overage (mt)	Total catch plus exempted fisheries and scallop overage (mt)	Amount of sub-ACL exceeded after addition of overage (mt)
Sector 1	45	450	47	450	0	94	544	95
Sector 2	30	300	32	300	0	64	364	63
Common Pool	20	200	21	150	−50	42	192	−8
State Waters Fisheries, Exempted Fisheries, and the Scallop Fishery	5	50	NA	300	250	NA	NA	NA
Total	100	1,000	100	1,200	200	200	1,100	150

7. Issuance of Limited Access NE Multispecies and Atlantic Sea Scallop Permits

Amendment 16 allows a vessel to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the same time. In addition, the owner of a vessel currently issued a limited access Atlantic sea scallop trawl permit is allowed to convert to a dredge gear permit without relinquishing his/her limited access NE multispecies permit. Changes to the permitting and VMS declaration procedures are necessary to implement these provisions and will be described in the small entity compliance guide (i.e., permit holder letter) that will be sent to all permit holder letters in conjunction with the implementation of this final rule.

8. Recordkeeping and Reporting Requirements

VTRs

This final rule revises the current VTR submission frequency for all vessels issued a NE multispecies permit from monthly to weekly. These changes now require that vessel owners/operators submit VTRs, including "did not fish reports," by midnight of the first Tuesday following the end of the reporting week (i.e., 0001 hr local time Sunday through 2400 hr local time the following Saturday). Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) constitutes fishing during that reporting week, but the date when fish are offloaded dictates the reporting week for which the VTR must be submitted to NMFS. Therefore, if a trip started, ended, or offloaded fish during a reporting week, a VTR is only necessary for the reporting week in which fish were offloaded, and a negative fishing report is not necessary for the reporting week in which a trip was started. For example, if a vessel issued a NE multispecies permit begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for that fishing trip must be submitted by midnight Tuesday of the third week, but a negative report (i.e., a "did not fish" report) is not required for either week. These measures make the VTR submission requirements consistent with dealer report submission requirements and increase the accuracy and timeliness of catch data available for monitoring and assessment purposes.

Area Declarations

This final action establishes four broad stock areas that encompass multiple statistical areas for the purposes of providing more accurate and timely data to apportion catch to individual stock areas, including providing area information for stock apportionment if VTR data are missing or delayed. Operators of all vessels issued a limited access NE multispecies permit that are fishing for NE multispecies under a NE multispecies DAS, under the provisions of a small vessel category (Category C) or Handgear A permit when fishing in multiple stock areas, or on a sector trip are required to declare their intent to fish in one or more of these broad stock areas via vessel monitoring system (VMS) prior to each trip on which NE multispecies may be landed. In addition, all vessels are required to submit the VTR serial number associated with the first page of the VTR for that trip, as instructed by the Regional Administrator. The VTR serial number will be used to link VTRs with dealer reports and VMS data to increase the accuracy of data used for monitoring catch.

Trip-Level Catch Reports

If the operator of a limited access NE multispecies vessel, including vessels issued a limited access Handgear A permit, declares his/her intent to fish in multiple broad stock areas on the same trip, as described above, the operator is required to submit a trip-level catch report to NMFS via VMS that details the amount of each regulated species or ocean pout species kept (in pounds, landed weight) from each broad stock area on that trip prior to crossing the VMS demarcation line upon the return to port, as instructed by NMFS. In addition, to allow NMFS to calculate an assumed discard rate for trips not observed by either a NMFS observer or an industry-funded at-sea monitor, vessel operators are also required to declare the total amount of all species

kept in each broad stock area, including species outside of the FMP. Requiring vessels to declare total catch by each stock area was not specified in the proposed rule, but is necessary to allow NMFS and sectors to calculate discard rates applicable for each trip. This report is required for all trips in multiple areas, unless the vessel is required to submit a daily VMS catch report when operating in one of the special management programs (SMPs), as described further below. These reports will be used to provide more timely data on catch apportionment to stock areas until VTR data become available.

This action approves the provision in Amendment 16 that allows NMFS to exempt a vessel participating in an approved sector from the trip-level VMS catch reports described above to reduce unnecessary duplication with sector reporting requirements (described below in Item 14 of this preamble). At this time, NMFS has determined that these trip-level catch reports are necessary to accurately monitor catch of regulated species and ocean pout by all NE multispecies vessels, including those that are fishing under an approved sector operations plan. If further review of available catch monitoring data indicates that trip-level catch reports are no longer necessary to accurately monitor regulated species and ocean pout catch, and duplicate other available catch data, NMFS may exempt sector vessels from such reporting requirements in subsequent FYs.

SMP Reporting Requirements

This action maintains the existing reporting requirements for vessels that participate in a SMP (i.e., SAPs, the U.S./Canada Management Area, and the Regular B DAS Program). However, this action revises the daily VMS catch report for SMPs by eliminating the current requirement for vessel operators fishing in SMPs to report species discards, and requiring vessel operators to specify the VTR serial number or other universal trip ID specified by NMFS, the date fish were caught (applicable only for SMP trips), and the amount of each NE multispecies species, and the total amount of all species, including both NE multispecies and those managed in another FMP, kept in each broad stock reporting area. While the proposed rule indicated that the requirement to report statistical area fished would be removed, this final rule maintains this requirement to ensure that NMFS can accurately attribute catch of GB cod and GB haddock against the Eastern U.S./Canada Area TACs for these stocks.

This final rule also implements a provision that provides the Regional Administrator with the authority to remove SMP-specific reporting requirements if it is determined that the reporting requirements are unnecessary. With the exception noted below, NMFS has determined that daily SMP-specific VMS catch reports for vessels participating in sectors are unnecessary, because sectors are allocated ACE for most regulated species and ocean pout stocks through this action and, therefore, are not subject to any SMP-specific TACs or other restrictions on catch; are responsible for ensuring that sector allocations are not exceeded; and provide sufficient information to monitor all sector catch through the submission of weekly sector catch reports described further in Item 14 of this preamble. This exemption from the SMP reporting requirements for sector vessels does not apply to vessels participating in the Closed Area (CA) I Hook Gear Haddock SAP. This SAP includes an overall haddock TAC that is applicable to both sector and common pool vessels fishing in this SAP. Therefore, the existing requirement for sector managers to provide daily catch reports by participating sector vessels is maintained. Consistent with Amendment 16, NMFS retains the authority to reinstate such reporting requirements if it is later determined that the weekly sector catch reports are insufficient to adequately monitor catch by sector vessels in SMPs.

Dealer Reporting and Record Retention Requirements

Because this action implements new requirements for dockside/roving monitors for common pool vessels beginning in FY 2012, and for sector vessels beginning in FY 2010, as described in Items 6 and 14 of this preamble, respectively, the dealer reporting and record retention requirements currently specified in § 648.7(a) and (e), respectively, are revised to require dealers to provide a copy of any dealer weigh-out documents or dealer receipts for a particular offloading event to dockside/roving monitors, allow the dockside/roving monitor to sign a copy of the official weigh-out document or dealer receipt retained by the dealer, or sign a dockside monitoring report provided by a dockside/roving monitor. In addition, this action requires that vendors providing dockside/roving monitor services retain and make available for review any records relating to fish offloaded and observed by dockside/roving monitors for 3 yr after the fish were first offloaded. This measure is intended to maintain consistency with existing record retention requirements and facilitate enforcement of measures proposed under Amendment 16.

Pre-Trip Observer Notification

To better monitor regulated species and ocean pout catch under Amendment 16, NMFS has received sufficient funding to increase observer coverage in the NE multispecies fishery for FY 2010, with additional funding possibly available in future years. At this time, funding is available to observe up to 30 percent of common pool trips, and up to 38 percent of sector trips. To ensure that NMFS can achieve targeted observer coverage levels, this action requires that any vessel issued a limited access NE multispecies permit and fishing under a NE multispecies DAS or on a sector trip provide NMFS with the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; area to be fished; and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery based on the authority provided the Secretary to request additional information to implement an FMP in sections 305(d) and 402(a) of the Magnuson-Stevens Act. For trips lasting 48 hr or less, the vessel owner, operator, or manager would be able to make a weekly notification, rather than a separate notification prior to each trip. Such weekly notifications must occur by 0001 hr of the Friday preceding the week (Sunday through Saturday) that they intend to complete at least one NE multispecies DAS or sector trip during the following week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. NMFS will inform the vessel whether an observer has been assigned for that trip, or a waiver issued within 24 hr of notification. This pre-trip notification fulfills the current and proposed observer notification requirements for trips into SMPs. If funding is no longer sufficient to provide high levels of observer coverage for the entire fishery, the Regional Administrator may eliminate this pre-trip notification requirement for all trips, as it would no longer be necessary to facilitate observer deployment for all NE multispecies vessels. If this occurs, the pre-trip observer notification requirements for trips into SMPs would remain in effect.

9. Effort Controls

This action approves all of the revisions to existing effort controls

listed in Amendment 16, including revisions to NE multispecies DAS allocations, NE multispecies DAS accrual provisions, gear restricted areas, and trip limits, as described in further detail below.

DAS Allocation

This action revises the way NE multispecies DAS allocated to both common pool and sector vessels are distributed between Category A and Category B DAS, as originally implemented under Amendment 13. Starting in FY 2010, the DAS allocations of common pool vessels will be distributed as follows: 27.5 percent of a vessel's Amendment 13 DAS baseline are allocated as Category A DAS, 36.25 percent of the Amendment 13 DAS baseline are allocated as Category B Regular DAS, and 36.25 percent of the Amendment 13 DAS baseline are allocated as Category B Reserve DAS. For example, a common pool vessel with an Amendment 13 DAS baseline of 88 DAS will be allocated 24.2 Category A DAS, 31.9 Category B Regular DAS, and 31.9 Category B Reserve DAS. This represents a 50-percent reduction from each vessel's 2006 DAS allocation, or an approximately 32-percent reduction from each vessel's 2009 DAS allocation.

This final rule implements a provision that exempts sector vessels from the DAS allocation reductions for common pool vessels described above, because sector vessels are now be subject to hard TACs rather than DAS to control fishing effort. As a result, this action retains the existing 2009 DAS allocations for vessel's participating in a sector for the purposes of participating in the monkfish fishery, a fishery that still requires the concurrent use of a NE multispecies DAS with a monkfish DAS for vessels issued a limited access Category C and D monkfish permit. If a vessel fishes in the common pool in one FY, but in an approved sector during the next FY, its DAS allocation for each FY will reflect whether the vessel is fishing under the common pool, or participating in an approved sector.

DAS Counting

Under Amendment 16, all NE multispecies DAS used by vessels fishing in the common pool will be counted in 24-hr increments, based upon the time called into the DAS program via VMS or the IVR system. For example, if a vessel fishes 6 hr, it will be charged for 24 hr of DAS usage; a vessel that fishes 25 hr will be charged for 48 hr of DAS usage. The existing differential DAS counting areas and minimum DAS charge for Day gillnet vessels (i.e., the 3–15 DAS counting rule where Day gillnet vessels were charged 15 hr for any trip greater than 3 hr or less than or equal to 15 hr in duration, but actual time fished for any trip less than or equal to 3 hr or greater than 15 hr in duration) are eliminated. Because sector vessels are exempt from the Amendment 16 NE multispecies DAS counting provisions for common pool vessels, sector vessels, including sector vessels fishing under the Day gillnet designation, will be charged NE multispecies DAS to the nearest minute based upon the time called into the DAS program via VMS or the IVR call-in system.

Restricted Gear Areas (RGAs)

This action implements two RGAs to reduce the catch of flatfish species (predominantly SNE/MA winter flounder and SNE/MA yellowtail flounder) by common pool vessels. Common pool vessels fishing any part of a NE multispecies trip in either the Western GB RGA or the SNE RGA are restricted to using the following gear: A haddock separator trawl, a Ruhle trawl, a rope trawl, longline/tub trawls, handgear, or sink gillnets. Tie-down gillnets are allowed to be used or stowed on board, provided the mesh is greater than or equal to 10 inches (25.4 cm). Gear other than those listed above may not be allowed on board when fishing within these RGAs. The Regional Administrator has the authority to approve the use of additional gear within these RGAs, provided the new gear meets the standards established for the approval of additional gear in SMPs. The existing gear performance standards apply to gear used in these areas to ensure that selective gear is used properly (e.g., restrictive trip limits for flatfish and other bottom-oriented species, such as 500 lb (226.8 kg) of all flatfish species combined, and zero lobsters). Common pool vessels fishing in the RGAs are required to declare into these areas via VMS, as instructed by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization (LOA) to fish in these RGAs. The minimum participation period for these LOAs would be 7 consecutive days, meaning that a vessel must agree to fish in these areas for a minimum of 7 consecutive days. If issued a LOA, a vessel must retain the LOA on board for the duration of the participation period. A vessel can fish inside and outside of these RGAs on the same trip, but will be subject to the most restrictive measures (gear, trip limits, etc.) for the areas fished for the entire trip. A vessel fishing outside of these areas can transit the RGAs, provided gear other than the selective gear specified above is properly stowed. Both the areas and the gear required to be used in these areas are further defined in this final rule.

Trip Limits

The following changes to trip limits are implemented by this action, but may be superseded by trip limits proposed in FW 44:

GOM cod: The possession limit is increased to 2,000 lb (907.2 kg) per DAS, up to 12,000 lb (5,443.2 kg) per trip for vessels fishing under a NE multispecies DAS or under the Small Vessel permit exemption (Category C permit).

GB cod: The possession limit is increased to 2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip for vessels fishing under a NE multispecies DAS or under the Small Vessel permit exemption. The existing trip limit for GB cod caught within the Eastern U.S./Canada Area or the Eastern U.S./Canada Haddock SAP remains the same at 500 lb (226.8 kg) per DAS, up to 5,000 lb (2,268 kg) per trip; and 1,000 lb (453.6 kg) per trip, respectively. Consistent with existing regulations, a vessel is required to declare its intent to fish exclusively within the GB Regulated Mesh Area (RMA) via VMS to be exempt from the GOM cod limit of 12,000 lb (5,443.2 kg) per trip.

Cod limit for Handgear A vessels: The possession limit is increased to 750 lb (340.2 kg) per trip, consistent with the automatic possession limit adjustment provision implemented under Amendment 13.

Cod limit for Handgear B vessels: The possession limit is increased to 200 lb (90.7 kg) per trip, consistent with the automatic possession limit adjustment provision implemented under Amendment 13.

CC/GOM and SNE/MA yellowtail flounder: The possession limit is increased to 250 lb (113.4 kg) per DAS, up to 1,500 lb (680.4 kg) per trip.

GB yellowtail flounder: There is no possession limit specified for this stock at the beginning of each FY. However, the Regional Administrator could implement a possession limit either prior to, or during, the FY to prevent the available GB yellowtail flounder TAC specified for common pool vessels fishing in the U.S./Canada Management Area from being exceeded.

Atlantic halibut: The current trip limit of one fish per trip is maintained.

SNE/MA winter flounder, windowpane flounder, ocean pout, and Atlantic wolffish: Landing of these stocks is prohibited in any fishery.

In addition to the trip limits specified above, this action allows common pool vessels to land only one landing limit of regulated species in any 24-hr period. If fishing in multiple stock areas, the most restrictive possession limits for each species applies to the entire trip. Because DAS used by common pool vessels are now counted in 24-hr increments, the existing cod running clock provision is eliminated through this action.

10. DAS Leasing and Transfer Programs

All of the revisions to the DAS Leasing and Transfer Programs in Amendment 16 were approved and are implemented by this final rule, including: (1) Allowing permits held in confirmation of permit history (CPH) to participate in the DAS Leasing and Transfer Programs without being activated by being placed onto a vessel, (2) elimination of the DAS conservation tax in the DAS Transfer Program (any DAS reduced due to the conservation tax applied to previously approved transfers would not be reinstated), and (3) elimination of the DAS leasing cap added to the FMP by Amendment 13 (i.e., there would be no limit on the number of DAS that a permit holder could lease from another permit holder). Existing restrictions on leasing DAS between vessels participating in sectors and those fishing in the common pool are continued under this action. A similar restriction on DAS transferred under the DAS Transfer Program is described in Item 14 of this preamble.

11. Minimum Fish Size

This action reduces the minimum fish size of haddock from 19 inches (48.3 cm) to 18 inches (45.7 cm) for all NE multispecies vessels, including both commercial and recreational vessels, to reduce discards and increase landings of this healthy species due to slower than expected growth rates of mature fish. This action also increases the minimum fish size for halibut from 36 inches (91.4 cm) to 41 inches (104.1 cm) for both commercial and recreational vessels to reflect the median length at maturity for female halibut in the GOM, increase opportunities for halibut to spawn prior to capture, and improve the likelihood that this stock will meet rebuilding objectives.

12. SMPs and SAPs

All of the changes to existing SAPs for both common pool vessels and those fishing in an approved sector proposed in Amendment 16 have been approved and implemented in this action, as described in further detail below.

U.S./Canada Management Area

This final rule revises the provision first implemented under FW 42 that counted all catch of cod, haddock, and yellowtail flounder against the Eastern U.S./Canada TACs for GB cod and GB haddock, and the overall TAC for GB yellowtail flounder for vessels fishing inside/outside of the Eastern U.S./Canada Area to accommodate the allocation of these stocks to sectors, as further described in Item 14 of this preamble.

Incidental Catch TAC

The current regulations specify incidental catch TACs to limit the catch of species of concern (i.e., stocks that were overfished or subject to overfishing) when vessels were targeting healthier regulated species or ocean pout stocks under a Category B DAS in SMPs. This action revises these provisions to reflect that incidental catch TACs will be based upon the ACL available to the commercial common pool fishery and to specify an incidental catch TAC for pollock. The incidental catch TAC for pollock is specified as 2 percent of the ACL available to common pool vessels and will be distributed to all SAPs, as follows: 50 percent to the Regular B DAS Program, 16 percent to the CA I Hook Gear Haddock SAP, and 34 percent to the Eastern U.S./Canada Haddock SAP. Consistent with existing SAP provisions, once the pollock incidental catch TAC is projected to be caught by common pool vessels, the use of Category B DAS in that particular SAP would be prohibited for the remainder of the season, as specified by the Regional Administrator.

Eastern U.S./Canada Haddock SAP

The Eastern U.S./Canada Haddock SAP, scheduled to expire at the end of FY 2009, is extended indefinitely through this action. In addition, participating vessels may use codends with a minimum mesh size of 6 inches (15.24 cm) diamond or square mesh when participating in this program and using selective trawl gear such as the haddock separator trawl or the Ruhle trawl. All catch by sector vessels when participating in this SAP will count against the sector's allocation for each stock, including those specific to the Eastern U.S./Canada Area. Because sectors will be restricted by their allocations for each stock, sector vessels will not be restricted in the gear that could be used when participating in this SAP. Sector vessels will be allowed to continue to fish in this Eastern U.S./Canada Area Haddock SAP for the entire season specified for this SAP as long as the sector to which they belong has been allocated quota for all stocks caught in this SAP.

CA I Hook Gear Haddock SAP

The CA I Hook Gear Haddock SAP is revised to expand both the area and the season of this SAP. The season is extended to run from May 1 through January 31. The seasonal split between sector and common pool vessels is eliminated, as is the division of the available GB haddock quota between sector and common pool seasons. This means that once the available GB haddock quota specified for the SAP is caught, the SAP will be closed to all vessels, including sector vessels. Sector vessels and common pool vessels would be able to fish under this SAP throughout the proposed season, provided the SAP is not closed and sectors to which vessels belong have been allocated quota for all stocks caught in this SAP. The SAP area is extended to cover most of the northern portion of CA I, as described further in this final rule. All other requirements of this SAP remain unchanged by this action. Finally, this action prohibits vessels participating in the SAP from using squid or mackerel for bait, or even possessing squid or mackerel on board the vessel to reduce the catch rates of cod in this SAP.

SNE/MA Winter Flounder SAP

Because F on SNE/MA winter flounder must be reduced to as close to zero as practicable, and no vessels will be allowed to possess SNE/MA winter flounder under this action, the SNE/MA Winter Flounder SAP is temporarily suspended until improving stock conditions warrant its re-implementation under a future Council action.

CA II Yellowtail Flounder/Haddock SAP

The CA II Yellowtail Flounder SAP is revised by this action to facilitate the harvest of GB haddock within CA II, even when the SAP is closed to targeting GB yellowtail flounder. This revised CA II Yellowtail Flounder/Haddock SAP builds upon the existing provisions of the CA II Yellowtail Flounder SAP by modifying the gear requirements and season when the area is open to targeting haddock. When the SAP is open to targeting yellowtail flounder based upon the amount of GB yellowtail flounder available, the existing CA II Yellowtail Flounder SAP provisions apply. This includes the season (July 1 through December 31), individual vessel trip limits (one trip per vessel per month), cumulative

fishery trip limits (320 trips per year, unless otherwise specified by the Regional Administrator), gear requirements (one of two types of flounder nets specified in the regulations, the haddock separator trawl, or the Ruhle trawl), GB yellowtail flounder trip limit (10,000–30,000 lb (4,536–13,608 kg) per trip), GB cod trip limit (1,000 lb (453.6 kg) per trip), and other provisions. When the SAP is not open to the targeting of GB yellowtail flounder, either because there is insufficient GB yellowtail flounder available to open the SAP, or because the maximum number of trips has been taken, the SAP will open to target GB haddock, provided the Eastern GB haddock ACL has not been caught by common pool vessels, or there is sufficient quota for all stocks caught in the SAP for vessels participating in an approved sector. If the SAP is open to target haddock, the following provisions apply, unless otherwise noted below: Season (August 1 through January 31), gear requirements (a vessel is not allowed to use a flounder net and must instead use a haddock separator trawl, a Ruhle trawl, or hook gear), trip limits (no haddock trip limit, and the existing trip limits for GB cod and GB yellowtail flounder), and the existing SAP DAS and discard provisions. All catches of GB haddock apply to the Eastern GB haddock quotas allocated to either common pool or vessels participating in individual sectors. Sector vessels are not subject to the trip limits, limits to the number or frequency of trips (i.e., the current restriction of 1 trip per month or the maximum 320 trips per year) or DAS restrictions specified for this SAP, but are subject to the gear requirements for this SAP. Individual sector vessels will be allowed to continue to fish in this modified CA II Yellowtail Flounder/Haddock SAP should it close to common pool vessels, as long as the applicable sector has allocated quota remaining for all stocks caught in this SAP.

13. Recreational Measures

To ensure that management measures can be tailored to address the components of the fishery responsible if mortality targets are exceeded, this action allocates portions of the GOM cod and GOM haddock ACLs to the recreational fishery based upon the criteria proposed to allocate regulated species and ocean pout stocks between the NE multispecies commercial/recreational fishery, as described in Item 5 of this preamble. To meet the target F for GOM cod, this action also extends the existing seasonal GOM cod prohibition for recreational vessels, including both private recreational and charter/party vessels for 2 weeks, to run from November 1 through April 15. Other recreational measures implemented by this action include the elimination of the limit on the number of hooks that can be used (recreational anglers are still limited to one line per angler), and the requirement that all fillets landed by private recreational and charter/party vessels must have at least 2 sq inches (5.08 sq cm) of contiguous skin that allows for the ready identification of the fish species. Such fillets are required to be from legal-sized fish, but the fillets themselves would not need to meet the minimum size requirements in the regulations. Finally, as stated above for commercial vessels, this final rule reduces the minimum size for haddock from 19 inches (48.3 cm) to 18 inches (45.7 cm) total length, indefinitely, and increases the minimum size for Atlantic halibut from 36 inches (91.4 cm) to 41 inches (104.1 cm) total length. Atlantic wolffish would be added to the FMP, with zero possession allowed for all recreational vessels.

Consistent with language in the Amendment 16 FEIS, the preamble of the proposed rule for this action indicated that the possession of SNE/MA winter flounder is prohibited in any fishery. However, while the proposed rule included regulatory text that prohibited common pool and sector vessels from possessing this stock, it did not include similar language for private recreational and charter/party vessels. To accurately reflect the intent of the Council under Amendment 16, this final rule revises the regulatory text at § 648.89 to insert a prohibition on the retention of SNE/MA winter flounder by all recreational vessels.

14. Sector Measures

This action approves all sector measures proposed under Amendment 16, including the formation of 17 additional sectors and revisions to many existing sector requirements such as sector allocation provisions, operations plan requirements, and monitoring and reporting requirements, as specified further below. In addition, vessels participating in an approved sector are required to comply with the sector-specific AMs specified in Item 6 of this preamble, sector reporting requirements described in Item 8 of this preamble, and sector provisions specified for individual SMPs outlined in Item 12 of this preamble.

Based upon the comments received on the proposed rule for this action, there remains some confusion as to whether a sector is a limited access privilege program (LAPP), as defined in the Magnuson-Stevens Act. NMFS would like to clarify that NMFS does not consider sectors to be LAPPs, and they are not subject to the referendum or cost-recovery requirements of the Magnuson-Stevens Act. There is no permit issued to a sector, and no permanent or long-term allocation of fish is made to any sector. Unlike individual fishing quotas (IFQs), sectors are temporary, voluntary, fluid associations of vessels that can join together to take advantage of flexibilities and efficiencies that sectors are afforded. Vessel owners may choose to join a sector or not, and can change their decisions from one year to the next, based on what they believe are the best opportunities for them at that point in time. Additional details regarding NMFS' interpretation of the LAPP and IFQ provisions of the Magnuson-Stevens Act are provided in the response to Comment 49, below.

Sector Eligibility and Definition

This action allows permits held in CPH to join sectors. In addition, because this action now controls sector effort through hard TACs instead of a combination of hard TACs and DAS, vessels issued a limited access NE multispecies Handgear A permit (a permit that is not subject to DAS effort controls) are now eligible to participate in sectors. Only those vessels that were issued a limited access NE multispecies permit or CPH as of May 1, 2008, are eligible to participate in sectors. Finally, consistent with the Council's sector policy, this action defines a sector as a group of three or more persons, none of whom have an ownership interest in the other two persons in the sector to address concerns that sectors may be used as a means to circumvent the individual transferable quota referendum required by the Magnuson-Stevens Act, and minimize the administrative burden associated with implementing a large number of very small sectors.

Operations Plan Requirements

Amendment 13 specified a number of required elements that must be included in each sector operations plan. This final rule adds to those requirements to provide additional details regarding sector reporting and monitoring provisions, as well as to better understand the composition and effort distribution of participating vessels so that the Council can better evaluate the impacts of sectors. These additional operations plan requirements include information about overage penalties if a sector exceeds its allocation for any

stock; detailed information about the sector's independent third-party dockside/roving monitor service provider that meets NMFS standards to monitor sector landings; detailed information about a monitoring program for discards; a list of all Federal and state permits held by vessels participating in the sector; a list of specific ports where sector members will land fish with specific exemptions provided for safety, weather, and other reasons; TAC thresholds and how the sector would notify NMFS once the threshold has been reached; identification of potential redirection of effort as a result of sector operations and any efforts to limit the adverse effects of such redirection of effort; and finally how regulated species or ocean pout would be avoided while participating in other fisheries that have a bycatch of regulated species and ocean pout if the sector does not anticipate being allocated or acquiring an allocation of such species from another sector. This last requirement is only required if the sector anticipates operating in this manner. Sector operations plans are required to be submitted by September 1 of each year to ensure that the operations plans and associated analysis are reviewed in time to implement such operations by the start of the next FY on May 1. Operations plans may address sector operations over either a 1- or a 2-year period, provided the analysis is sufficient to cover the duration of the applicability of the operations plan. The Regional Administrator will review each sector operations plan and associated analysis and approve or disapprove such operations, with implementation through publication of a rule in the **Federal Register.**

Universal Sector Exemptions

This final rule maintains the existing restriction that sectors cannot be exempted from year-round closures, permitting restrictions, gear restrictions designed to reduce habitat impacts, and reporting requirements. However, this final rule also establishes several "universal exemptions" in which all sectors will be exempt, including trip limits on stocks for which the sector receives an allocation (described in more detail below); seasonal closed areas; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.5-cm) mesh codend when fishing with selective gear (i.e., the haddock separator trawl, the Ruhle trawl, or other approved gear) on GB, provided such vessels fish with a 6-inch (15.24-cm) mesh codend; and portions of the GOM Rolling Closure Areas (described in more detail below). Sectors may still request and analyze additional exemptions as part of their yearly operations plans, but such exemptions need to be approved by the Regional Administrator. The provisions applicable to a sector, including any exemptions from existing regulations, will be specified in a LOA issued to sectors by the Regional Administrator, which must be possessed on board participating vessels at all times to facilitate enforcement of sector provisions.

Sector Allocations, Potential Sector Contribution (PSC), and Annual Catch Entitlement (ACE)

Consistent with the Council's intent to transition from input controls to output controls, this action does not rely upon DAS to control sector effort on regulated species or ocean pout, relying instead on hard TACs to control sector catch. Under this action, sectors will be allocated fishery resources for all regulated species stocks, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and SNE/MA winter flounder, and ocean pout based upon the fishing histories of participating vessels. Although SNE/MA winter flounder is not allocated to sectors at this time, if the status of SNE/MA winter flounder improves, this stock would be allocated in a manner similar to how other stocks are allocated, as described below.

Sector allocations are in the form of an ACE for each stock, or the maximum amount of a particular stock that a sector could catch—including both landings and discards—on a yearly basis. Each individual sector's ACE for a particular stock represents a share of that stock's ACL available to commercial NE multispecies vessels based upon the cumulative PSCs of vessels participating in each sector. A PSC represents an individual permit's share of the ACL for each regulated species or ocean pout stock based upon the individual permit's dealer landings available to NMFS (see below for further detail), including the landings histories for any permit histories consolidated onto one vessel prior to May 1, 2008, as part of the existing DAS Transfer Program provisions. These PSCs remain with the limited access permit indefinitely, including upon replacement of a vessel, or consolidation with another limited access NE multispecies permit on another vessel. The ACE allocated to a sector is valid only for one FY and is recalculated on a yearly basis based upon changes to sector rosters. While Amendment 13 specifically restricted the size of an individual sector allocation to no more than 20 percent of the yearly TAC for any regulated species or ocean pout stock, this action eliminates that restriction to further facilitate participation in sectors.

The PSC for each regulated species or ocean pout stock is based upon historic landings of each stock while operating under the restrictions of a limited access NE multispecies permit, including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries. With the exception of GB cod, the PSC for each stock is calculated by summing the dealer landings for each permit during FYs 1996 through 2006. This value is then divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors to get the individual permit's share of the available commercial ACL for each stock. The landings history for each permit includes all landings that can be attributed to that permit. For limited access NE multispecies Handgear A permits, this includes landings by the permitted vessel during FYs 1996 through 2003, before the adoption of the limited access Handgear A permit category in 2004. For GB cod, any vessel owner that indicated his/her intent to participate in one of the existing sectors (i.e., the GB Cod Hook Sector or the GB Cod Fixed Gear Sector) by signing a preliminary roster for these sectors by March 1, 2008, is allocated a GB cod PSC based upon documented landings histories of this stock between FYs 1996–2001, the years selected to determine the GB cod allocation for existing sectors under Amendment 13. A process to correct data used to calculate each permit's PSC for each stock was outlined in a May 1, 2009, letter to all limited access NE multispecies permit holders and updated on July 27, 2009, and again on November 2, 2009. These letters are available on the NMFS Northeast Regional Office Web site (*http://www.nero.noaa.gov*).

Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Understanding (i.e., GB yellowtail flounder, GB cod, and GB haddock) will be allocated a specific portion of such ACEs that could only be harvested from the Eastern U.S./Canada Area. The ACE specified for the Eastern U.S./Canada Area portions of these stocks will be proportional to the sector's allocation of the overall ACL available to commercial NE multispecies vessels for these stocks. For example, if a sector is allocated 10 percent of the GB cod ACL available to commercial NE multispecies vessels,

that sector would also be allocated and allowed to harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to commercial NE multispecies vessels is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, this sector would be allocated 100 mt of GB cod, of which 10 mt would be allocated to, and could be harvested from, the Eastern U.S./Canada Area.

A sector can only fish in a particular stock area if it is allocated, or acquires through transferring ACE from another sector, ACE for all stocks allocated to sectors in that stock area. Catch for all allocated regulated species or ocean pout stocks, including both landings and discards, count against a sector's ACE for a particular stock. Sector vessels are required to retain all legal-sized regulated species and ocean pout and are only allowed to discard undersized fish for all allocated stocks. Once a sector's ACE for a particular stock is caught, a sector is required to cease fishing operations in that stock area for the rest of the FY, or until it acquires additional ACE for that stock. If, in a particular FY a sector exceeds its ACE for a particular stock after considering all ACE allocated to that sector or acquired from another sector, that sector's ACE for that stock will be reduced by the amount of the overage in the following FY. If there is insufficient ACE allocated to a particular sector to cover the overage, vessels participating in that sector will not be allowed to fish in the stock area for which the overage occurred unless and until that sector acquires sufficient ACE from another sector to cover the remaining overage (i.e., the overage that exists after reducing the ACE for that stock to zero for the following FY). For example, if a sector is allocated 10 mt of GB cod ACE, but catches 25 mt of GB cod during the previous FY, the GB cod ACE for the following FY would be reduced to zero and that sector would be required to acquire at least 5 mt (i.e., 15 mt overage − 10 mt ACE allocated = 5 mt overage remaining) of GB cod ACE in order to fish in the GB cod stock area during the following FY. If the sector disbands, individual participating vessels will be subject to a reduction in PSC if participating in another sector, or a reduction in allocated DAS if participating in the common pool, proportional to the individual vessel's share of the maximum overage that occurred. For example, if a sector exceeds its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit in that particular sector that enters the common pool during the subsequent FY would receive a 15-percent reduction in its Category A DAS allocation for that FY. If a sector comprised of 10 permits/vessels exceeds its GB cod ACE by 10,000 lb (4,536 kg) during the previous FY, but later disbands, each permit in that sector that joins another sector during the subsequent FY would have its GB cod PSC temporarily reduced by 1,000 lb (453.6 kg) during that FY. A sector could also specify additional penalties to participating vessels as part of its yearly operations plan. If the sector does not exceed its ACE for any stock, but other vessels in the common pool or another sector exceed their sub-ACLs or ACEs, respectively, the sector's ACE in the following FY would not be reduced as a result of such overages by other groups. This is intended to ensure that groups responsible for exceeding their portion of the ACL for a particular stock do not negatively impact other groups.

If a sector exceeds its ACE at the end of the FY, it could be held jointly and severally liable for such an overage and may be subject to a permanent reduction in the sector's ACE (i.e., a permanent reduction in individual vessel's PSCs) or a withdrawal of the approval of that sector in addition to the penalties described above. In addition to ACE overages, a sector and its participants could be held jointly and severally liable for discarding legal-sized fish or misreporting catch (both landings and discards).

With the exception of GB yellowtail flounder, a sector is allowed to carry over up to 10 percent of unused ACE for each stock into the following FY, even if a sector's roster has changed between those FYs. Any unused ACE allocated for Eastern GB stocks contributes to the 10-percent carry-over allowance for each stock as a whole, but will not increase an individual sector's allocation of Eastern GB stocks during the following year. In addition, a sector is not allowed to carry over any unused ACE for GB yellowtail flounder into the next FY. Because the U.S. portions of the TACs for GB yellowtail flounder and Eastern GB cod and Eastern GB haddock are specified on a yearly basis as part of the Understanding, allowing sectors to carry over any of these stocks could result in U.S. harvest of these stocks exceeding the U.S. portions of these stocks for a particular FY if all vessels fully harvested the TACs specified to either sectors or the common pool. This could result in a violation of the Understanding and the need to deduct such overages during the following year based upon existing regulations implementing the Understanding.

ACE Trading

All or a portion of a sector's ACE for any regulated species or ocean pout stock may be transferred to another sector at any time during the FY, and up to 2 weeks into the following FY. ACE transfers will be approved by the Regional Administrator through the submission of an ACE transfer request form that details the amount of ACE transferred and any compensation exchanged. The Regional Administrator will approve/disapprove such a transfer request based upon whether the sector is compliant with applicable reporting requirements, including the weekly sector catch report described below, and individual VTR requirements. Such transfers are only valid for the FY requested on the transfer request form. To ensure that such ACE trading does not lead to overfishing, NMFS will withhold 20 percent of each sector's ACE for each stock for a period of 61 days (i.e., through June 31) to accommodate any transfers of ACE late in the FY and to allow sufficient time for NMFS to evaluate sector catch data to determine if an overage actually occurred.

DAS Transfer Requests by Sector Vessels

The DAS Transfer Program involves the permanent transfer of a vessel's NE multispecies DAS, along with any other limited access permits and associated fishing history. Because the fishing history of each permit affects the ACE allocated to each sector, this action allows a sector vessel to transfer DAS and associated fishing history to another vessel participating in that vessel's sector, but prohibits a sector vessel from transferring any DAS to or from common pool vessels or vessels participating in a different sector. This is necessary to facilitate the administration of the DAS Transfer Program without affecting the ACE allocation of each sector due to such transfers.

Sector Monitoring and Reporting Requirements

Amendment 16 and this final rule requires sectors to develop mechanisms to adequately monitor catch and discards by participating vessels. One of these mechanisms is an independent third-party dockside/roving monitoring program that observes offloads by sector vessels to ensure that landings are accurately reported. This dockside/roving monitoring program is required starting in FY 2010, and will be funded by sectors, unless otherwise specified by NMFS. Dockside monitors observe

offloadings directly to a dealer, while roving monitors are used to monitor offloads to a truck for later delivery to a dealer. Such a program must employ a dockside/roving monitor service provider approved/certified by NMFS based upon specific provider and operational standards developed by the Gulf of Maine Research Institute (GMRI) and members of the fishing industry, in consultation with NMFS, as further described in this final rule. During FY 2010, the offloads of 50 percent of trips by each sector will be randomly observed, with 20 percent randomly observed in future years. In addition, because discards and area fished are critical elements in the monitoring of sector catch, sectors are required to develop an adequate independent third-party at-sea/electronic monitoring program no later than FY 2012. This program will be used to verify area fished and catch (landings and discards), by species and gear type, for the purposes of monitoring sector ACE utilization. Coverage levels will be specified by NMFS on a yearly basis, based upon a list of participating vessels and gear types for each sector. At a minimum, such coverage will be sufficient to ensure that the resulting estimate of discards meets the coefficient of variation specified in the Standardized Bycatch Reporting Methodology (SBRM), but it is expected that coverage is likely to be higher than this minimum standard to monitor catch (both landings and discards) as closely as possible and to minimize coverage bias in each sector. Electronic monitoring could be used in lieu of actual at-sea monitors in the future, provided the technology is deemed sufficient by NMFS for a specific gear type and area fished; NMFS has not yet deemed electronic monitoring technology sufficient for any gear or area fished. Existing NMFS-funded observer coverage will continue under this action. Any at-sea monitoring coverage provided by an approved sector at-sea monitoring program will be in addition to the coverage provided by NMFS-funded observers. If a NMFS-funded observer and an industry-funded at-sea monitor are assigned to the same trip, the NMFS-funded observer will take precedence and will cover that trip, and the at-sea monitor will not be deployed on that trip, to minimize costs to industry. To facilitate deployment of dockside/roving and at-sea monitors and enforcement of these provisions, vessels must submit trip-start and trip-end hail reports to the dockside/roving and at-sea/electronic monitoring service providers and to NMFS Office of Law Enforcement, unless otherwise specified in an approved sector operations plan, as further described in this final rule. The details for any dockside/roving and at-sea/electronic monitoring program must be specified in each sector's annual operations plan.

Discards will be monitored through the use of a sector-specific assumed discard rate, unless NMFS deems that there are sufficient observer or at-sea monitor data available to specify a sector-specific, inseason discard estimate for each stock/gear combination specified in the FMP. Once sufficient data are available, the sector-specific inseason discard rate will apply to all trips taken by sector vessels for the remainder of the FY, in lieu of the assumed discard rate. If a trip is observed by either an observer or an at-sea monitor, the discards reported by the observer or at-sea monitor will be used to document discards for that particular trip instead of using an assumed discard rate, regardless of whether the sector has developed an approved at-sea monitoring program for that FY (see the NMFS Northeast Regional Office Web site for further details: *http://www.nero.noaa.gov/sfd/sfdmultisector.html*).

The data and methodology used to calculate a Sector-specific assumed or inseason discard rate is considered an administrative measure necessary to administer the FMP and monitor sector catch. As a result, the manner in which such rates are calculated may change on a yearly basis. For FY 2010, NMFS will calculate the assumed discard rate based upon observed trips by sector vessels during FY 2009, by stock and gear type, as specified in Section 4.2.3.5.3 of the Amendment 16 FEIS. If there are insufficient data to develop an assumed discard rate at this level, a fleet-wide stock and gear discard rate will be used instead. When calculating these discard rates, regulatory discards of legal-sized fish caused by trip limits will be excluded to represent anticipated behavior under sectors. These assumed discard rates will be calculated as often as practicable, and will be used to add a discard estimate to each landing by a sector vessel so that total catch can be determined for each stock for each trip. Based upon available funding, NMFS intends to increase the NMFS-funded observer and at-sea monitor coverage to include approximately 38 percent of sector trips and 30 percent of common pool trips during FY 2010, and possibly future FYs.

Sectors are required to submit an annual report to NMFS by July 1 of each year that provides information necessary to evaluate the biological, economic, and social impacts of sectors. The report must include harvest levels of all vessels for all federally managed species, enforcement actions, and other information needed to evaluate the performance of the sector. In addition, sectors must submit weekly catch reports that provide sector catch and discard for each stock allocated to that sector, as instructed by the Regional Administrator. Sectors must provide trip-level catch data, if requested, to facilitate the auditing of sector catch data to ensure that data used by sectors are consistent with those submitted to NMFS, based upon the provision in Amendment 16 that allows other requirements of sector monitoring plans to be implemented, as directed by the Regional Administrator.

Authorization of Sectors

Amendment 16 authorizes 17 new sectors and revises the provisions for 2 existing sectors. These sectors include the GB Cod Hook Gear Sector, GB Cod Fixed Gear Sector, Sustainable Harvest Sector, Port Clyde Community Groundfish Sector, Northeast Fishery Sectors I through XIII, Tristate Sector, and the Northeast Coastal Communities Sector. All operational aspects of these sectors have been proposed in their annual operations plans, as submitted to NMFS.

15. VMS Requirement

Because this action relies upon VMS to submit area declaration, hail reports, and catch information necessary to implement provisions approved in Amendment 16, all vessels issued a limited access NE multispecies permit and fishing under either a NE multispecies DAS or on a sector trip must use a VMS for each NE multispecies trip. In addition, any vessel issued a limited access NE multispecies small vessel Category C or Handgear A permit that fishes in multiple broad stock areas must also use a VMS for each NE multispecies trip. The preamble to the proposed rule for this action inaccurately stated that all vessels issued a limited access NE multispecies permit would be required to use VMS. However, the proposed regulations correctly reflected the intent described above. Consistent with existing VMS regulations, upon taking either a common pool or a sector trip, a vessel issued a limited access NE multispecies permit must maintain an operational VMS for the remainder of the FY.

16. Framework Items

This action revises the management measures that may be modified by a

framework action by adding the following measures to the list of measures that can be adjusted through a framework action: Process for specifying and distributing ABCs and ACLs; trimester TAC distribution; sector provisions, including authorized sectors; PSC calculations; and any other provision implemented under the FMP.

17. Corrections

As described in the proposed rule for this action, a number of inadvertent errors, omissions, and ambiguities in existing regulations must be corrected in order to ensure consistency with, and accurately reflect the intent of previous actions under the FMP. This final rule clarifies that although the replacement vessel size restrictions do not apply to Handgear A vessels, the limitation on one vessel replacement per year does apply to these vessels. Outdated references to the gillnet tag requirements for Trip gillnet vessels eliminated by FW 40B are removed. The Atlantic sea scallop access program regulations are revised to cross reference the correct SNE/MA yellowtail flounder trip limit and eliminate references to incorrect trip limits. Regulations providing the Regional Administrator with the authority to modify or delete exemptions to the existing exempted fisheries are reinserted to reflect regulations originally implemented on a permanent basis by FW 9 (60 FR 19364; April 18, 1995). This action clarifies that limited access general category scallop vessels, and limited access scallop vessels not fishing under a scallop DAS, that are fishing in the GOM RMA must fish in the GOM Scallop Dredge Exemption Area, and are prohibited from fishing in any other part of the GOM RMA, and must use dredge gear to harvest scallops in the GOM Scallop Dredge Exemption Area to reflect the intent of measures in FW 21 (62 FR 8404; February 25, 1997). In addition, general category scallop vessels, and limited access scallop vessels not fishing under a scallop DAS, that are fishing in the SNE RMA must fish in the SNE Scallop Dredge Exemption Area, and are prohibited from fishing in any other part of the SNE RMA, and must use dredge gear to harvest scallops in the SNE Scallop Dredge Exemption Area. The western border of the SNE Scallop Dredge Exemption Area is corrected to coincide with the eastern border of the MA Exemption Area. An incorrect reference to midwater trawl gear as exempted gear in the GOM Rolling Closure Area regulations is removed to reflect measures implementing FW 43. Restricted Gear Area 1 point 72 is added to make the regulations consistent with FW 22 (March 10, 1997; 62 FR 10747) and the regulations for the American lobster fishery. The regulations for the DAS Leasing Program are clarified to allow a one-time DAS leasing baseline downgrade opportunity for a NE multispecies permit that results from the combination of two limited access NE multispecies permits merged under the DAS Transfer Program. This final rule also clarifies that the upgrade of any baseline specification under the DAS Transfer Program precludes any future upgrades through subsequent transactions and removes outdated references that a permit involved in a DAS transfer must forfeit all other permits. Regulatory text regarding closure of the Eastern U.S./Canada Area once 100 percent of the Eastern GB cod TAC is harvested is inserted to reflect the intent of the provisions originally implemented under Amendment 13. Several coordinate points defining the CC/GOM and SNE/MA stock areas for yellowtail flounder in the Regular B DAS Program are revised to maintain consistency with the areas adopted under FW 42. Finally, the existing regulations are revised to allow the stowage of other types of gear when fishing in the Eastern U.S./Canada Haddock SAP to be consistent with the overall regulations for the Eastern U.S./Canada Area.

18. Transfer of ACE by NOAA-Sponsored Permit Banks

The proposed rule for this action considered allowing any state-operated permit bank sponsored by NOAA to be a sector to enable such permit banks to lease ACE to qualifying sectors to minimize any adverse socio-economic impacts to fishing communities associated with catch-share programs. Public comment received on this action indicated that, although many supported the concept to allow permit banks to transfer ACE and DAS, others believed there was insufficient information provided in the proposed rule to effectively evaluate the implications of such measures. Some public comments expressed a concern that such provisions would have broader implications on the definition of a sector, as developed by the Council in Amendment 16, and on the ability of existing and future permit banks to operate under the sector provisions approved under Amendment 16. To foster further discussion on permit banks and how they are affected by the provisions approved under Amendment 16 and implemented by this action, NMFS has removed proposed measures specific to NOAA-sponsored permit banks from this final rule and will recommend that the Council develop a means to address public comments regarding permit banks, including those sponsored by NOAA, in a subsequent Council action.

19. Approval of Service Providers for FY 2010 Sector Dockside and At-Sea Monitoring Programs

As described in Items 6 and 14 of this preamble, Amendment 16 requires that service providers interested in providing dockside and/or at-sea monitoring services to common pool and sector vessels apply to, and be approved/certified by, NMFS. Based upon consultation with the GMRI and industry participants, NMFS expanded the service provider approval/certification standards listed in Section 4.2.3.5.4 of the Amendment 16 FEIS to include operational standards necessary to effectively implement both dockside and at-sea monitoring programs in Amendment 16. These expanded standards were listed in the Amendment 16 proposed rule and were used to approve/certify dockside and at-sea monitoring service providers under this action.

Potential service providers identified by the sector proponents were invited to a workshop at the NMFS Northeast Fisheries Science Center (NEFSC) in August 2009. This workshop presented the service provider requirements of the Amendment 16 DEIS. In order to implement Amendment 16 sector requirements by May 1, 2010, NMFS specified that service providers intending to provide dockside and/or at-sea monitoring services to sectors during FY 2010 would be required to demonstrate their compliance with the service provider standards as part of the operations plan of each sector interested in retaining their services. Because sectors were required to submit operations plans to NMFS by September 1, 2009, potential service providers needed to demonstrate compliance with these standards by September 1, 2009. NMFS received complete applications from four service providers intending to provide dockside and/or at-sea monitoring services to sectors, and one service provider intending to provide only dockside monitoring services to sectors in FY 2010.

Discussions with members of industry and service provider applicants identified the need to approve service providers ahead of the sector operations plans final rule to allow time for industry and service providers to arrange contracts before May 1, 2010. It was decided that service providers and proposed FY 2010 sectors could be

notified of a preliminary determination about service provider approval/disapproval as soon as possible, and that the Regional Administrator's final determination would be published concurrent with the approval of sector monitoring measures in this Amendment 16 final rule. On December 24, 2009, service provider applicants and proposed FY 2010 sectors were notified of NMFS's preliminary approval of all five applicants as eligible to provide monitoring services to sectors in FY 2010. In this final rule, the Regional Administrator is announcing the final approval of dockside/at-sea monitoring service providers based upon the completeness of their applications and a determination of their ability to perform the duties and responsibilities of a dockside/at-sea monitoring service provider, as specified by Amendment 16 and the proposed rule for this action.

The Regional Administrator has approved the following four service providers as eligible to provide both dockside and/or at-sea monitoring services to sectors in FY 2010:

- A.I.S., Inc., 89 North Water Street, New Bedford, MA 02747, phone 508–990–9054, fax 508–990–9055, Web site *http://www.aisobservers.com.*
- East West Technical Services, 34 Batterson Drive, New Britain, CT 06053, phone 860–223–5165, fax 860–223–6005, email *ewtsct@ewts.com.*
- MRAG Americas, 65 Eastern Ave., Unit B2C, Essex, MA 01929, phone 978–768–3880, fax 978–768–3878, Web site *http://www.mragamericas.com.*
- Saltwater Inc., 733 N. Street, Anchorage, AK 99501, phone 907–276–3241, fax 907–258–5999, Web site *http://www.saltwaterinc.com.*

The Regional Administrator has approved the following service provider as eligible to provide dockside monitoring services to sectors in FY 2010:

- Atlantic Catch Data Ltd., 99 Wyse Road, Suite 815, Dartmouth, Nova Scotia, CANADA B3A 4S5, phone 1–902–422–4745, fax 1–902–422–9780, Web site *http://www.atlanticcatchdata.ca.*

Comments and Responses for Amendment 16

Fifty comments were received during the comment period specifically on the proposed rule for this action from 28 individuals, 7 fishing industry groups, 6 conservation groups, a group of scientists from 1 university, 1 fish dealer, 1 state resource management agency (Massachusetts Division of Marine Fisheries (DMF)), 2 community groups, 1 sector, and 3 professional organizations. Only comments that were specifically directed to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. Other comments were received in connection with the notice of availability for Amendment 16. Many of these overlap with comments addressing the proposed rule to implement Amendment 16. NMFS responses to these comments, as set forth in its Record of Decision for approval/disapproval of Amendment 16, are incorporated herein by reference. Please note in considering the responses to comments below that NMFS may only approve or disapprove measures proposed in a fishery management plan or amendment, and may not change or substitute any measure in a substantive way, pursuant to section 304(a)(3) of the Magnuson-Stevens Act.

General Comments

Comment 1: The Northeast Hook Fisherman's Association (NEHFA) suggested that Amendment 16 is inconsistent with National Standard 6 because it does not allow for variations among, and contingencies in, fisheries and catches among participants. This group notes that the number of active limited access NE multispecies Handgear A vessels had been reduced by nearly 50 percent since 2004 and that the proposed measures may force the remaining permits out of business.

Response: NMFS disagrees. The commenter offered minimal explanation as to why NEHFA believes that Amendment 16 is inconsistent with National Standard 6, and seems to misinterpret National Standard 6 to mean that current or historical participation in the fishery must be preserved. In the National Standard 6 Guidelines, NMFS has interpreted this national standard to require that FMPs have the capacity to respond to changes in fishing practices, catches, stock conditions, or other uncertainties inherent in managing marine resources by building in flexibility to adapt to such changes and uncertainties. Amendment 16 includes a number of provisions that are meant to provide flexibility to adapt to changing resource and fishery conditions, including a process to establish ACLs and revise management measures on a biennial basis that reflect updated estimates of stock status and management conditions; increasing incentives to participate in the DAS Leasing and Transfer Programs that help provide additional access to DAS for vessels to remain economically viable; dual management regimes that allow a vessel to choose to continue to operate under DAS and/or trip limits, or operate under hard-TAC management of sectors; and increasing incentives to fish selectively through expanded SAPs and the establishment of RGAs. Although not all of these measures are available to Handgear A vessels, Amendment 16 expanded the sector eligibility provisions to specifically allow these permits to join sectors to provide the necessary flexibility to participate in either the common pool or sectors, based on which management regime would offer the most benefit to the individual vessel. Previously, Handgear A vessels were not allowed to participate in sectors. Thus, the measures implemented by this action do take into consideration variations and contingencies in fisheries, fishery resources, and catches, consistent with National Standard 6.

Comment 2: The Environmental Defense Fund (EDF) and Penobscot East Resource Center (PERC) supported efforts to transition the fishery from a DAS management regime to a catch share regime in the form of sectors, but suggested that the Council should continue to improve the design and adaptability of sector management measures. Specifically, EDF recommended, and PERC supported, that the Council consider an adaptive management set-aside of quota once stocks rebuild to facilitate additional management needs and objectives, including biological, economic, or social issues. In addition, PERC recommended that that Council consider who should be able to hold or land a sector's ACE, and restricting ACE trades based upon vessel size or gear usage.

Response: The Council did not explicitly consider measures recommended by EDF and PERC in Amendment 16 and they are not considered to be necessary at this time to ensure consistency of Amendment 16 with Magnuson-Stevens Act requirements. Therefore, this action need not implement such measures. However, the Council could develop such measures through a future Council action.

Comment 3: One industry member suggested revising the current definitions of the haddock separator trawl and the Ruhle trawl. Revisions to the haddock separator trawl include requiring the separator panel to begin at the forward edge of the first belly of the net and run the full length of all of the bellies of the net. Revisions to the Ruhle trawl include removing the requirements for a minimum fishing circle, kite panel size, and size and placement of rockhoppers in the sweep

of the net and are intended to facilitate its use by smaller vessels.

Response: The original haddock separator trawl description was based upon gear research available at the time it was proposed under Amendment 13. At that time, there were conflicting recommendations within available research regarding the placement of the separator panel. The definition that was finally implemented reflects input from participants in some of that research, as well as other gear experts. Further, the Ruhle trawl definition was based upon extensive experimentation. Another experiment testing a smaller version of the Ruhle trawl is under review. Because these revisions to gear definitions have not been previously made available for public comment and could likely change the behavior and performance of these nets, it is not appropriate to revise such definitions through this final rule. Instead, it would be more appropriate to consider such revisions in a future Council action.

Comment 4: The New Hampshire Commercial Fisherman's Association (NHCFA) suggested that the Council reconsider a means of converting DAS to an allocation of pounds, and recommended that pollock be considered a transboundary stock for the purposes of adjusting management measures to accommodate management inequities between the United States and Canada and lessen the mortality reductions necessary under Amendment 16. NHCFA also stated that Amendment 16 underestimates the economic impacts of proposed measures. Mayor Lang of New Bedford, MA stated that the economic analysis must include impacts on communities, including impacts to the tax base and infrastructure if vessels will no longer remain economically viable.

Response: The Council considered including DAS as an element in the calculation of PSCs, but elected, based on reasons included in Amendment 16, to adopt options only involving historic landings. The Council may reconsider a means of converting DAS to an allocation of pounds similar to the DAS Performance Plan, a plan that was proposed by the NHCFA, during the development of Amendment 17 or another future action. Consideration of pollock as a transboundary stock is ongoing, with a joint U.S./Canada assessment being developed for 2010. However, a formal agreement to jointly manage this stock has not yet been developed. Therefore, the mortality reductions necessary under Amendment 16 consider fishing mortality from all sources, including catch by both U.S. and Canadian vessels. Finally, a full analysis of the economic impacts of Amendment 16 measures was conducted for the FEIS. The scope of this analysis was based on established guidelines. This analysis uses the best available scientific information, but notes that there are a number of sources of uncertainty associated with measures in Amendment 16 that make precise evaluation of impacts difficult. A full discussion of the impacts of changes in occupational opportunities and community infrastructure is in Section 7.6.3.4 of the FEIS.

Comment 5: One individual, the Association of Professional Observers (APO), and the United National Fisherman's Association (UNFA) recommended that the Amendment 16 public comment period should be extended to end upon the completion of the comment period for the draft national catch share policy on April 10, 2010, stating that there was not enough time to comment on proposed measures and that Amendment 16 sector provisions should not be finalized until the national policy is defined.

Response: The measures in Amendment 16 are necessary to end overfishing and ensure that overfished stocks continue to rebuild. The rebuilding plans in the FMP rely upon implementation of management measures beginning in FY 2010 on May 1, 2010, otherwise the success of such rebuilding programs may be compromised. Due to the time necessary to review and respond to public comments and make determinations about the final measures under this action, it is not possible to extend the public comment period to April 10, 2010, and still implement final measures by the start of FY 2010. Because it is administratively difficult and disruptive to the fishery to implement measures during the middle of the FY, particularly measures that involve hard TACs, it would be impractical and contrary to the public interest to further delay this action to accommodate further public review and implement this action mid-year. While the Amendment 16 sector measures may not fully reflect the final catch share policy, the Council has the capacity to revise management measures in the future to comply with such a policy, as necessary. The measures in Amendment 16 have been under development for over 3 years, and have involved substantial public involvement through the Council process. Further, public comment either on Amendment 16 itself, or the proposed rule to implement measures in Amendment 16, has been solicited since the Amendment 16 NOA was published on October 23, 2009. Therefore, NMFS believes that there has been sufficient time to consider and comment on the Amendment 16 measures implemented by this action.

Comment 6: The Northwest Atlantic Marine Alliance (NAMA) and PERC recommended that community fishing associations be formally recognized in Amendment 16. These groups stated that these associations are necessary to help ensure that sectors do not lead to the elimination of community-based fisheries, and is consistent with, and furthering the purposes of, the Magnuson-Stevens Act.

Response: As the group pointed out in their comment, the current regulations do not prohibit community fishing associations from forming or participating in the current DAS Leasing/Transfer Programs, or in an approved sector. Formally recognizing such associations in Amendment 16, or any other action, would not affect their ability to participate in the fishery or achieve their goals. Moreover, such organizations were not proposed to be and were not formally recognized by the Council in Amendment 16. Due to the absence of any measures on how such community fishing associations would be integrated into Amendment 16 measures, there would be neither the justification for, nor any purpose served in recognizing such associations, particularly without any consideration or public input regarding such a recognition.

Incorporation of Atlantic Wolffish and Associated Measures

Comment 7: One commercial fisherman, the Conservation Law Foundation (CLF), and the Nature Conservancy (TNC) supported adding Atlantic wolffish to the FMP. However, TNC did not support designating essential fish habitat (EFH) for this species to include the entire exclusive economic zone (EEZ). CLF suggested that cusk should be added to the FMP as well.

Response: This final rule adds Atlantic wolffish to the FMP to end overfishing and to implement management measures to rebuild the species through a possession prohibition. Because the Amendment 16 FEIS notes that there is little information and a high degree of uncertainty regarding population status and the reliability of survey data for this stock, designation of EFH throughout the EEZ was considered appropriate at this time, until further information can be acquired to narrow the scope of the EFH, as necessary. The notice of intent to prepare an SEIS, seeking comment on measures to incorporate during the

development of Amendment 16, suggested that the Council was considering incorporating cusk and wolffish into the FMP, pending the results of stock assessments for both species. As part of the Data Poor Working Group, a stock assessment was completed for Atlantic wolffish, but a stock assessment for cusk was not completed. Therefore, there is not enough information available at this time to add cusk to the FMP.

Comment 8: The NEHFA opposed the zero possession limit restrictions for Atlantic wolffish specified for both the commercial and recreational fisheries, stating that it is not warranted at this time. Drawing parallels to the management of Atlantic halibut, this group recommended implementing a one-fish-per-trip limit instead. This group stated that such an approach toward wolffish would not create a directed fishery, but would preserve valuable catch data that can be used to assess the status of this species, especially considering that trawl surveys cannot produce reliable information due to the complex habitat that wolffish prefer.

Response: The report of the Data Poor Working Group concluded that wolffish was overfished, but could not determine whether overfishing is occurring. The report noted the high level of uncertainty regarding many of the parameters used to determine stock status, including natural mortality, maximum age, and fecundity, and recommended that catch remain low. Research indicates that this species has a high survival rate if returned to the sea quickly. For these reasons, the Council developed the initial rebuilding program in Amendment 16 and adopted a zero possession allowance for this species to reduce F to the extent practicable. Because the Council did not consider allowing vessels to land one-fish-per-trip, as recommended by the NEHFA, NMFS cannot revise this action to implement the one fish per trip limit. Because the zero possession limit is consistent with National Standard 1 Guidelines requirements to rebuild overfished stocks, NMFS implements the zero possession limit in Amendment 16 though this final rule.

Status Determination Criteria

Comment 9: CLF and the Northeast Seafood Coalition (NSC) recognized the high level of uncertainty associated with the GOM and SNE/MA winter flounder stock assessments, respectively, and recommended that NMFS work with the NEFSC to improve the assessments of these stocks.

Response: NMFS recognizes that GARM III indicates that there is a lot of uncertainty associated with the assessments of GOM and SNE/MA winter flounder. Efforts are currently underway to improve the assessments of these stocks, including updating histological maturity data and considering alternative forward projecting models. These improvements will be incorporated into the next assessments for these stocks.

Rebuilding Programs

Comment 10: CLF accepted the rationalization for adopting an F of as close to zero as practicable for SNE/MA winter flounder under Amendment 16, but stated that there will be significant bycatch associated with this strategy.

Response: NMFS believes that, given the circumstances associated with this stock, as described in the preamble to the proposed rule for this action, the rebuilding approach specified in Amendment 16 is reasonable and consistent with applicable law, including section 304(e)(7) of the Magnuson-Stevens Act. NMFS acknowledges that bycatch remains a concern with this stock as it continues to rebuild, but contends that there are a number of provisions in Amendment 16 that help minimize bycatch to the extent practicable, including RGAs and an ABC control rule that increases incentives to reduce bycatch by basing the ABC on incidental bycatch, including a reduction in the bycatch rate, until the stock is rebuilt.

Comment 11: The NSC indicated that the proposed rule did not clarify whether rebuilding programs could be revised through a biennial adjustment, a framework adjustment, or as part of the specifications process.

Response: The regulations at § 648.90(a)(2)(iii) and (a)(6)(i), as highlighted in NSC's comment, provide the Council with the authority to revise any measure currently specified in the FMP, including rebuilding programs, through one of the cited regulatory actions. As an example of the application of such authority, the Council previously established a rebuilding program for GB yellowtail flounder through FW 42 in 2006, and plans on revising that same rebuilding program through FW 45 for 2011.

Comment 12: The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) supported efforts to establish rebuilding programs with a 75-percent probability of success.

Response: This action implements new rebuilding programs for witch flounder and GB winter flounder, both of which include a 75-percent probability of success for rebuilding by 2017. For the other new rebuilding programs established under this action (i.e., pollock, wolffish, and northern windowpane flounder), it is not possible to determine a probability of success due to uncertainty in the assessments, or because the assessments are based upon survey indices.

ABC Control Rule and Mortality Reductions Necessary To Achieve Rebuilding Targets

Comment 13: The PEW Environmental Group (PEW) suggested that the ABC control rule in Amendment 16 is not lawful, in that Amendment 16 should specify a probability that an actual catch equal to the ABC for each stock would result in overfishing, does not identify a stock biomass level below which no fishing should occur, and failed to specify a cap that would limit bycatch based upon the best scientific information available. CLF shared similar concerns, suggesting that future revisions to the ABC control rules should more closely reflect the letter of the National Standard 1 Guidelines.

Response: The ABC control rule is consistent with the Magnuson-Stevens Act and associated National Standard Guidelines. Section 7.2.1.1.2 of the FEIS provides a qualitative assessment of the impacts of the ABC control rule on overfishing. The ABC control rule specifies the ABC of a particular stock at the median catch associated with 75 percent F_{MSY} or $F_{rebuild}$, whichever is lower. Because the ABC for all stocks is set at the median catch associated with a level of F that is already below the level associated with overfishing (i.e., at 75 percent of F_{MSY}), the ABC control rule will always result in ABCs with at least a 50-percent probability of avoiding overfishing. Thus, the ABC control rule will specify a level of catch such that the resulting F will always be less than the maximum F threshold when the stock is less than the biomass at MSY or its proxy, especially when additional information is not available to more accurately estimate uncertainty. Analysis included in the environmental assessment (EA) prepared for FW 44, currently under NMFS review, indicates that, although probabilities that overfishing would occur cannot be determined for all stocks, the FY 2010–2012 ABCs that result from the application of the control rule in Amendment 16 have between a zero and 20-percent chance of resulting in overfishing for stocks for which such a probability can be calculated. Thus, the application of the Amendment 16 ABC control rule has less than a 50-percent

chance of resulting in overfishing, and is consistent with applicable court rulings. As specified in the response to comments in the final rule promulgating National Standard 1 Guidelines (January 16, 2009; 74 FR 3190), the ABC control rule need not stipulate a level of biomass below which fishing is prohibited. Although ABC control rules could specify such a threshold, failure of this ABC control rule to specify such a threshold does not mean that the ABC control rule is inconsistent with National Standard 1. Finally, the Amendment 16 ABC control rule developed by the SSC specifies that, for stocks that cannot rebuild in the specified rebuilding period, the ABC should be based on incidental bycatch, including a reduction in bycatch rate (i.e., the proportion of the stock caught as bycatch). Because Amendment 16 measures prohibit all vessels from landing SNE/MA winter flounder, the ACL specified in FW 44 based on the Amendment 16 ABC control rule becomes the de facto bycatch cap. The SSC recommended the ABC that result in the ACL, and NMFS has determined that the bycatch cap for this species is based upon the best available scientific information.

ABC/ACL Specifications and Distribution Process

Comment 14: Several commercial fishermen commented that the ACLs for pollock and GOM winter flounder are too low, do not match recent catch history for these stocks, and would result in substantial economic impacts to vessels and associated fishing communities. One commercial fisherman suggested that a trip limit be specified for sector vessels during FY 2010, or until the stock assessment can be corrected to reflect recent landing patterns, to ensure that sectors do not exceed their ACE for pollock and have to cease fishing. Another commercial fisherman questioned the accuracy of data that led to the specification of the GOM winter flounder ACL, stating that the GOM winter flounder ACL should be at least as high as the ACL for CC/GOM yellowtail flounder.

Response: Amendment 16 specified the process for implementing ACLs in the fishery, but the actual ACLs for FY 2010 are proposed in FW 44. FW 44 and its associated EA state that the proposed ACLs are based upon the best scientific information available and reflect the ABC recommended by the SSC and the ACLs adopted by the Council. It is true that ACLs specified for the fishery at large, and the resulting ACEs to individual sectors, are not likely to be similar to recent catches, because F for many stocks must be reduced during FY 2010, and the ABCs/ACLs specified must incorporate consideration of both scientific and management uncertainty, as required by the Magnuson-Stevens Act. NMFS believes that the ACL process in Amendment 16 is necessary and consistent with the requirements of the Magnuson-Stevens Act. Because the Council did not propose implementing a pollock trip limit for sectors under Amendment 16, NMFS cannot unilaterally implement such a provision in this final rule. However, sectors may independently impose a pollock trip limit for participating vessels to regulate catch and ensure that the sector does not prematurely harvest available pollock ACE allocated to that sector and require the sector to cease fishing.

Comment 15: One commercial fisherman noted that the ACLs established by the Amendment 16 ACL specification process would not account for the catch of NE multispecies as a result of cooperative research. This individual stated that it is unreasonable to expect that a sector vessel owner will utilize valuable ACE to participate in a research project. Because such research is vital to fisheries management, this individual recommended that NMFS must identify a process to accommodate such research, including using ACL management reserves (presumably the amount of the ACL reduced to accommodate management uncertainty), or risk reducing industry participation in cooperative research.

Response: Cooperative research is important to the management of NE multispecies. NMFS recognizes that sector vessel owners might be reluctant to use ACE to participate in cooperative research. However, there is currently no mechanism in the FMP to reserve a portion of the total catch to support cooperative research. The Council considered, but did not adopt, a research set-aside program under Amendment 16 that would have reserved 1 percent of the available catch of all stocks toward supporting research projects. Further, when quantifying the ACLs for FY 2010–2012 under FW 44, the Council did not specifically incorporate scientific research into considerations of management uncertainty. NMFS cannot unilaterally add a provision in this final rule to accommodate catch associated with cooperative research. However, the Council could reconsider a research set-aside program, or revise the components that contribute to management uncertainty through a future Council action. Based upon the ACL specification process in Amendment 16, this action accounts for the catch associated with cooperative research toward the ACL in two ways. First, if a vessel meets the definition of a scientific research vessel conducting a scientific research activity, as defined in the Magnuson-Stevens Act, catch associated with that research will be attributed to the other non-specified sub-components of the ACL for each stock, because such catch is outside of the authority of the FMP, similar to state-waters catch. Second, if the vessel is conducting an activity that does not meet the definition of a scientific research vessel conducting a scientific research activity, the vessel is subject to commercial fishing regulations and any catch will be attributed to either the ACL available to the common pool, or to a particular sector's ACE for each stock. Thus, absent other alternatives to accommodate cooperative research catch that avoid deducting it from a sector's ACE, all catch by cooperative research vessels is accommodated under this action.

AMs

Comment 16: CLF contends that imposing AMs on the NE multispecies fishery for excessive catch in other fisheries is a form of inequitable punishment.

Response: Consistent with the Magnuson-Stevens Act, Amendment 16 specified AMs that would be sufficient to prevent overfishing of any stock regulated by the FMP. Because the FMP could not impose AMs on any other fishery, unless through a joint management action (Amendment 16 is not a joint action), it was only possible to specify AMs that apply to the NE multispecies fishery in this action. With the exception of the Atlantic sea scallop and herring fisheries, most other fisheries catch minimal amounts of NE multispecies. The Council is already developing an AM to address yellowtail flounder bycatch in the scallop fishery under Amendment 15 to the Atlantic Sea Scallop FMP and could develop similar AMs for other fisheries through other actions. For the bycatch of regulated species and ocean pout stocks by the herring fishery, NMFS interprets the measures implemented by FW 43 for that fishery to be AMs for the purpose of controlling bycatch of stocks managed by the FMP. In the meantime, however, enforcing AMs on the NE multispecies is unavoidable in order to ensure compliance with the Magnuson-Stevens Act conservation objectives. Finally, National Standard 4 Guidelines recognize that disadvantaging one group of fishermen may be necessary to serve overarching conservation objectives of the FMP.

Comment 17: CLF and the CCCHFA suggest that the Amendment 16 common pool differential DAS counting AM is not consistent with the National Standard 1 Guidelines because there are no inseason controls and no payback provision in the case of an overage. These groups, along with PEW, recommended that NMFS immediately impose a hard-TAC backstop, stating that there is no true catch limit for common pool vessels during FY 2010–2011. CLF supported implementation of the trimester TAC AM for the common pool, but noted that it expects NMFS will calculate an offset into the differential DAS counting rate to accommodate an overage payback mechanism.

Response: The differential DAS counting AM is consistent with National Standard 1. Neither the Magnuson-Stevens Act, nor the National Standard 1 Guidelines mandate the use of fishery closures or the use of inseason controls as AMs. As outlined in the National Standard 1 Guidelines, reactionary AMs similar to the differential DAS counting AM are just as valid as inseason AMs, although the guidelines recommend that inseason AMs be utilized whenever adequate inseason information is available. Amendment 16 requires the type of AMs described by commenters, but delays the implementation until FY 2012 in order to allow orderly transition from the current DAS management regime to one with many sectors, hard TACs, and fishery closures. In the meantime, Amendment 16 requires the use of a combination of accepted approaches to implement AMs beginning in FY 2010, employing a reactionary differential DAS counting AM for FYs 2010 and 2011. Although fishery closures would not be triggered upon the catch of common pool ACLs during FYs 2010 and 2011, management measures would be revised in the following FY through the implementation of differential DAS counting if these ACLs are exceeded, to prevent overfishing and exceeding such ACLs in the future, which is the intent of the new requirements of the Magnuson-Stevens Act. Further, if measures adopted under FW 44 are approved, the Regional Administrator would have the authority to revise common pool trip limits and DAS charging rates inseason to further assure that common pool catch rates would be controlled such that ACLs would not be exceeded. NMFS cannot unilaterally implement such a hard-TAC backstop AM for FY 2010 under Amendment 16. Also, the Council did not specifically include an overage payback provision for the common pool in the differential DAS counting AM, despite adopting such a provision in the trimester TAC AM for FY 2012. Therefore, no changes to the differential DAS counting AM are implemented in this action.

Comment 18: Five commercial fishermen and the NSC opposed the application of differential DAS counting for wolffish. One fisherman suggested that such protection is unnecessary, as most of the areas in which wolffish are caught are already off limits to commercial vessels due to permanent closure areas, and predicted that if such an AM is applied to wolffish, it would cause a derby fishery in the common pool. The NSC opposed the general application of differential DAS counting rates to smaller areas if the catch of that stock that contributes to triggering that AM would come from a much larger area.

Response: The Magnuson-Stevens Act mandates that FMPs include AMs for all managed species to prevent overfishing. Because the Council added wolffish to the FMP in Amendment 16, an AM should be established for this stock to comply with applicable law, regardless of other measures in the FMP to protect this species, such as closure areas. Section 4.3.7.1.1 of the Amendment 16 FEIS describes that the common pool would be subject to the differential DAS counting AM for FYs 2010 and 2011, but Amendment 16 does not specifically exempt any of the species managed under the FMP from this AM. In fact, the Council evaluated where each stock was caught to determine which areas would be subject to differential DAS counting if the AM for a particular stock was caught. Table 26 of the Amendment 16 FEIS identifies the areas in which differential DAS counting AM would apply for each stock managed by the fishery, including wolffish. Although the Council did not specifically identify wolffish catch as a trigger for a differential DAS AM, wolfish was not exempted from this AM either. In fact, Amendment 16 specifically listed the areas that would be affected by differential DAS counting if the ACL available to the common pool for this species was exceeded. Therefore, NMFS, under the authority provided in section 305(d) of the Magnuson-Stevens Act, has reasonably concluded that this species is not, nor was ever intended by the Council to be, exempt from the differential DAS counting AMs under this action. Wolffish is a bycatch species that is not targeted by the fishery. As a result, the FY 2010 ACL specified for wolffish for the common pool is very low. Although this could increase the risk that the differential DAS counting AM could be triggered, it is not likely that the fishery will revise its behavior to target this species as part of a derby fishery knowing that differential DAS counting might be triggered during the subsequent fishing year. Finally, even though wolffish is caught throughout the NE, it is caught predominantly in the inshore GOM and inshore GB areas. Therefore, it is unlikely that large amounts will be caught outside of these areas and contribute to triggering the AM for this stock. If catch shifts to other areas, the Council could revise these areas through a future Council action.

Comment 19: The CCCHFA suggested that all vessels should be subject to fishery closures to ensure consistency with National Standard 4, and noted that common pool AMs are more lenient than sector AMs because they do not involve fishery closures, at least for FY 2010 and 2011.

Response: NMFS disagrees that all segments of the fishery must be subject to the same measures to be fair and equitable, or that fishery closures are required as AMs, as noted in the response to Comment 17. The AMs in Amendment 16 reflect a balancing of different factors, including transition factors, regarding the multiple types of management measures to be implemented, are reasonably calculated to promote conservation, and do not discriminate between residents of different states. All AMs in Amendment 16 apply to all vessels in all states, even though the AMs applicable to individual vessels may be different. Each vessel owner has the choice to fish under hard TACs and fishery closure AMs in sectors, or to fish under the DAS system and its associated differential DAS counting AM. Therefore, the AMs implemented for the common pool for FY 2010 and 2011 are consistent with National Standard 4.

Comment 20: CLF fully supports the proposed sector AMs, stating that they are fully compliant with applicable law. The NSC and associated members request that NMFS clarify what constitutes an overage regarding the requirement for sectors to cease fishing once or before an ACE is exceeded, by including regulatory text at § 648.87(b)(1)(ii) that references the date fish are received or purchased by a dealer after considering all ACE transfer requests received or approved by NMFS.

Response: Based in part on NSC's comment regarding the clarification of an ACE overage, the regulations at § 648.87(b)(1)(ii) have been revised to include language that ACE overages will be determined on the date fish are received or purchased by a dealer, after considering all requests for ACE

transfers that are ultimately approved by the Regional Administrator.

Comment 21: The NHCFA stated that the recreational AMs are not of the same proportion or consequence as the AMs specified for the commercial fishery. CLF suggested that there are no inseason or post-season recreational AMs specified in Amendment 16. They suggested that NMFS should require the Council to develop a more robust AM program under Amendment 17 so that no component of the fishery is under the false impression that AMs are not applicable.

Response: Amendment 16 indicates that the recreational AMs include adjustments to season, minimum fish size, or possession limits, with the ability to specify separate AMs for the private boat and charter/party components of the recreational fishery. Further, Amendment 16 indicated that these AMs would be triggered if the recreational fishery exceeded it's allocations of GOM cod and GOM haddock, or if the catch of these stocks by other components of the fishery not subject to an AM exceed their allocations and the overall ACL for either stock is exceeded, as described in detail in the proposed rule for this action. These measures will be implemented by January of the FY following the overage of the recreational AMs of GOM cod and/or GOM haddock. However, Amendment 16 does not include any specific recreational AM for a particular FY due to the uncertainty in the number of participants and the expected catches from year to year, and the need to coordinate the development of recreational AMs with the directors of state marine resource management agencies who sit on the Council. This is similar in approach to that applied to the differential DAS counting AM for the commercial fishery, in that the actual differential DAS counting rate and the area in which such a rate would apply will be specified by the start of the next FY based upon the projected catch for the commercial common pool fishery as of January of each year. The recreational angler permits/registry recently implemented will help reduce the uncertainty associated with the number of anglers fishing in a particular FY. However, the impact of changes to recreational possession limits, minimum fish size changes, and revisions to fishing seasons depend upon the amount and distribution of fishing effort, size of fish caught, and stock abundance and are difficult to quantify in advance, compared to commercial fishing effort. Therefore, recreational AMs will be developed once it is known how many fish were caught during a particular year, as necessary. Further, coordination with state resource management agencies through the Council is the most efficient way to ensure that recreational AMs can be effectively developed and implemented on the state level, where a substantial portion of recreational fishing activity occurs. All AMs implemented under this action are designed to prevent overfishing by either preventing ACLs from being exceeded, or addressing any overages of ACLs. Amendment 16 is clear that the appropriate AMs will be developed by NMFS in consultation with the Council, should the recreational fishery exceed its allocation of GOM cod or GOM haddock during a particular FY. Therefore, while the Council could consider developing a more robust AM program in a future management action, it is not necessary to clarify the Council's intent regarding the applicability of AMs for the recreational fishery.

Issuance of Limited Access NE Multispecies and Atlantic Sea Scallop Permits

Comment 22: PEW, CLF, CCCHFA, NAMA, and PERC strongly opposed the measure in Amendment 16 that allows the concurrent issuance of a limited access Atlantic sea scallop and a limited access NE multispecies permit. PEW, CLF, and CCCHFA claimed that it would undermine the successful transition to sectors and result in the loss of NE multispecies permits from several New England states due to acquisition of NE multispecies permits by scallop vessel owners. NAMA, PERC, and CCCHFA stated that such a provision eliminates incentives to reduce scallop bycatch and could turn the scallop fishery into a directed groundfish fishery. Finally, CLF suggested that there is inadequate analysis in the FEIS to support this measure, which does not meet the requirements of section 303(a)(9) of the Magnuson-Stevens Act; that there was no discussion of this measure by the Council; and that it is inconsistent with National Standard 8 because it fails to minimize adverse economic impacts on fishing communities. CLF urged NMFS to disapprove this measure unless it is clear that individual states fully support the potential reallocations of fishing effort that might occur.

Response: In addition to the current limited access NE multispecies Combination permit, Amendment 16 expands the allowance of a vessel to be issued both a limited access NE multispecies permit and a limited access Atlantic sea scallop permit at the same time to enable vessels to operate in a more profitable manner and reduce the costs of having to purchase, operate, and maintain multiple vessels to participate in both fisheries. In doing so, Amendment 16 also increases the value of such permits and the economic efficiency of vessel operations. This measure has no direct impacts on allocations within or between fisheries, and does not compromise the conservation measures of the fishery, as existing effort controls and permit restrictions in both fisheries, including DAS allocations, gear restrictions, trip limits and permit-splitting provisions, are maintained. Therefore, a limited access scallop dredge permit vessel could not retain more groundfish than is already allowed. Further, only in a limited circumstance will a vessel be able to fish for both scallops and groundfish on the same trip. In this circumstance, the vessel will be required to fish with trawl gear and comply with the applicable regulations under both the NE Multispecies and Atlantic Scallop FMPs. Furthermore, the scallop fishery will still be subject to any groundfish ACLs distributed to the fishery, and limited in the amount of groundfish that could be caught. Only landings history of limited access NE multispecies permits will be used to contribute to sector ACE allocations. Therefore, this measure, by itself, will not eliminate incentives to reduce the catch of groundfish in the scallop fishery, or affect the allocations detailed in Amendment 16 or FW 44. Because conservation controls in both fisheries are maintained, there is little chance that this measure will adversely impact the F in either fishery. A full analysis of the expected impacts of this measure is in Section 7.0 of the FEIS. This analysis, along with the other analyses in the FEIS, complies with all of the elements of a fishery impact statement required by section 303(a)(9) of the Magnuson-Stevens Act, and no further analysis is required. Although this analysis indicates that this measure may shift effort from New England states to MA states because the scallop fishery is predominantly based in SNE, the analysis notes that such shifts in effort are difficult to predict. While shifts in effort to different ports could result in the loss of revenue in affected communities, other measures in Amendment 16 help to foster continued participation in the NE multispecies fishery through the expansion of authorized sectors, increased access to haddock through revised SAPs and the Regular B DAS Program, and revisions to the DAS Leasing and Transfer

Programs. Taken as a whole, this action meets the conservation objectives of the FMP and applicable law, while minimizing the economic impacts and providing for the sustained participation of fishing communities to the extent practicable, consistent with National Standard 8. The Council first considered this measure early in the development of Amendment 16, voting unanimously to include this provision in Amendment 16 at its February 2007 meeting. This sentiment was reaffirmed in June 2009, when the Council adopted the final measures for Amendment 16, with a 15–0–2 vote for including this particular provision. Therefore, the Council has discussed this measure and there is universal support for this provision by all states participating in the Council, even those that some fear may lose NE multispecies permits as a result of this measure. Accordingly, NMFS has approved this measure in Amendment 16 and implements it through this action.

Recordkeeping and Reporting Requirements

Comment 23: CLF offered general support for the reporting requirements in Amendment 16, but Oceana expressed concerns that the reporting requirements were inadequate. Oceana did not explain why the proposed monitoring and reporting requirements were inadequate other than to state that key studies for the use of different data collection methodologies exist (such studies were not identified by the commenter), and that many of the monitoring issues were resolved in closed-door workshops that were not open to the public. Oceana insisted that the monitoring issues discussed at these workshops must be communicated through the Amendment 16 rulemaking.

Response: The workshops referenced by Oceana were not widely advertised and public participation was limited because they were designed to bring together NMFS staff and sector proponents and managers to work through some of the more difficult monitoring and reporting tasks associated with the Amendment 16 sector requirements. Based upon these meetings, reporting and monitoring strategies were refined and monitoring methodologies communicated to affected industry. NMFS believes that these workshops were essential to increasing the effective implementation of such requirements, increasing the accuracy of catch monitoring data under this action, and fostering cooperation between NMFS and sector participants. All of the discussions regarding how to effectively implement the Amendment 16 reporting requirements, including the workshops referenced by Oceana, are available to the public on the NERO Web site (*http://www.nero.noaa.gov/sfd/sfdmultisectorinfo.html*). Further information on these workshops and the monitoring and reporting requirements implemented by this action are available from the Regional Administrator (see **ADDRESSES**).

Comment 24: Five commercial fishermen, NHCFA, the Associated Fisheries of Maine (AFM), and the UNFA opposed increasing the submission frequency of "did not fish" reports. They stated that increasing the frequency of "did not fish" reports is too burdensome, as NMFS will receive sufficient catch information for a majority of the fleet through weekly sector catch reports and will be able to identify whether a vessel fished or not through VMS. Two commercial fishermen and the AFM specifically recommended that "did not fish" reports should only be submitted on a monthly basis, consistent with existing regulations. CCCHFA supported weekly VTR submission requirements.

Response: Increased reporting is critical to provide the data necessary for effectively monitoring catch under Amendment 16. Because several of the ACLs and sector ACEs are expected to be very small during FY 2010, it is not only important to identify when a vessel has fished and what it caught, but also to know when the vessel did not fish to identify if any catch data are missing. Therefore, "did not fish" reports are vital pieces of information that reduce the uncertainty of catch monitoring data. While there may be other data sources that can provide such information, including VMS position reports, not all vessels that land groundfish are required to use VMS. Therefore, it is not possible to rely on VMS at this time to accurately identify whether or not all vessels have actually fished during a particular reporting week. NMFS's Fisheries Statistics Office is attempting to develop ways to minimize the burden associated with submitting "did not fish" reports, including reevaluating the reporting frequency for such trips, electronic submission of "did not fish" reports, and offering alternative ways to confirm that a vessel did not fish during a reporting week. Any such changes would be implemented consistent with the Administrative Procedure Act, as appropriate.

Comment 25: Four commercial fishermen, NSC, and CCCHFA support the implementation of electronic VTRs through this action, stating that such technology is necessary to comply with the reporting requirements of Amendment 16.

Response: Current regulations allow the Regional Administrator to authorize the use of electronic VTRs instead of the conventional paper VTRs. To date, the Regional Administrator has not authorized the use of such electronic VTRs, as the existing technology has not yet been determined to be adequate. There are several pilot programs currently underway that are testing the efficacy of available electronic VTR software. Should efforts to develop and test new electronic VTR systems that meet the goals of the FMP and the existing regulations be determined to be successful, the Regional Administrator can authorize the use of such systems through rulemaking consistent with the Administrative Procedure Act.

Comment 26: One commercial fisherman opposed requirements for vessel operators to declare their intent to fish in one or more of the broad stock areas prior to each trip, and to submit trip-level VMS catch reports detailing the amount of NE multispecies kept from each broad stock area. This individual recommended that the existing catch reporting requirements be maintained, as there is no need for such additional reporting burdens.

Response: The current catch reporting requirements are not sufficient to address the additional monitoring requirements associated with implementing ACLs and sector measures under Amendment 16. It was widely recognized during the development of Amendment 16 that the existing reporting requirements did not provide timely information to attribute catch to stock areas. Even with the increased VTR submission requirements implemented by this final action, there is still a delay in receiving, processing, and validating such VTR data. Amendment 16 included a number of revisions to the existing reporting requirements to increase the timeliness and accuracy of catch data by helping attribute NE multispecies catch to the correct stock area until VTRs become available. Without additional reporting data, it would not be possible to accurately monitor catch in the NE multispecies fishery and ensure that sub-ACLs allocated to common pool vessels and ACEs allocated to sectors are not exceeded and result in overfishing. Because the Council specifically adopted new reporting requirements that involve reporting catch by broad stock area, NMFS cannot replace such reporting requirements in this action. Therefore, this action implements the additional reporting

requirements approved in Amendment 16.

Comment 27: The AFM suggested that NMFS revise the GB broad stock areas to reflect the division between the Eastern and Western U.S./Canada Area. They suggested that this would reduce confusion over the new reporting requirements and increase the accuracy of the reporting requirements.

Response: The Eastern and Western U.S./Canada Areas are used to facilitate the management of transboundary stocks of yellowtail flounder, cod, and haddock with Canada as part of the Understanding. The differentiation between Eastern and Western U.S./Canada Areas is necessary to ensure that NMFS can accurately monitor the catch of Eastern GB cod and Eastern GB haddock toward the harvest of area-specific quotas specified as part of that agreement. Thus, the differentiation between these areas is only necessary for 2 of the 20 stocks managed by the FMP. While revising the Offshore GB Broad Stock Area to reflect the current division between the Eastern and Western U.S./Canada Area may better reflect reporting areas familiar to many vessels, it would unnecessarily increase, not decrease, the complexity associated with the new catch reporting requirements, and would likely lead to less accurate catch reporting overall. This is because all vessels fishing in this area would be required to report catch of each species in each area, which could lead to misreporting and data entry errors. The existing VMS declaration provisions require vessels to declare their intent to fish in either the Eastern or Western U.S./Canada Areas, or both areas, on the same trip. Such declarations are used to ensure that DAS counting, gear requirements, and applicable trip limits can be enforced, but also to differentiate catch for Eastern GB cod and Eastern GB haddock stocks for catch monitoring purposes. Because differentiating catch between the Eastern and Western U.S./Canada Areas is not necessary for a vast majority of stocks, the recommendations by the AFM would unnecessarily increase the cost and time burden associated with complying with such reporting requirements without further contributing to catch monitoring under this action. Therefore, this action does not revise the Offshore GB Broad Stock Area to differentiate between the Eastern and Western U.S./Canada Area.

Comment 28: The CCCHFA supported the declaration and reporting requirements involving broad stock areas, but suggested that vessels should not be allowed to fish in multiple broad stock areas without 100-percent observer coverage.

Response: The suggestion to require 100-percent observer coverage for vessels fishing in multiple broad stock areas on the same trip is likely intended to reduce incentives for vessels to misreport catch. The Council did consider restricting vessels to fish in only one broad stock area per trip to simplify administration and increase the accuracy of catch reporting. However, the Council concluded that such an approach would be overly restrictive on vessel flexibility and efficiency of vessel operations. Various sources of data are used to validate one another, including self-reported catch data. For example, VMS positional data could be used to validate self-reported catch data by stock area to increase the accuracy of monitoring data and enforce the reporting requirements implemented by this action.

Comment 29: One commercial fisherman, AFM, and the Sustainable Harvest Sector supported the provision that would exempt sector vessels from the daily VMS reporting requirements associated with the U.S./Canada Management Areas.

Response: For the reasons listed in the discussion of the SMP reporting requirements in Item 8 of the preamble of the proposed rule for this action, NMFS determined that daily SMP-specific VMS catch reports for sector vessels are unnecessary, and is not implementing such requirements in this final rule. However, consistent with the provision adopted by the Council in Amendment 16, NMFS reserves the authority to reinstate such reporting requirements if it is later determined that the weekly sector catch reports are insufficient to adequately monitor catch by sector vessels in SMPs.

Comment 30: The Sustainable Harvest Sector believed that the proposed rule incorrectly specified that sector managers must provide daily catch reports to NMFS for sector vessels participating in the CA I Hook Gear Haddock SAP and believes that this provision should have been applied to individual vessels instead.

Response: The final rule implementing FW 41 (September 14, 2005; 70 FR 54302) included regulations at § 648.85(b)(7)(v)(D) that specify sector vessels fishing in the CA I Hook Gear Haddock SAP must submit a daily catch report to the sector manager based upon instructions provided by the Sector manager. The sector manager is responsible, in turn, for providing daily catch reports for participating vessels to NMFS. Therefore, this final rule only continues already existing requirements.

Comment 31: Two individual fishermen, the Sustainable Harvest Sector, and the NHCFA supported the pre-trip notification requirements proposed in this action, but suggested that 24-hr notice instead of 48-hr notice would be more effective, particularly for smaller vessels that fish nearshore. The AFM supported the notification requirements as proposed, while one other fisherman suggested that they were an unnecessary burden on industry. Two other fishermen suggested that a vessel should be able to notify the Observer Program of its intent to fish for the entire week, similar to current practices in the CA I Hook Gear Haddock SAP.

Response: As stated in the proposed rule, NMFS believes the pre-trip observer program notification requirements are necessary to effectively implement observer/at-sea monitoring coverage objectives under this action. Forty-eight hours is considered the minimum amount of time necessary to determine observer/at-sea monitoring coverage and deploy an observer/at-sea monitor once assigned. Therefore, this action does not revise the 48-hr advanced notice requirement. The proposed regulations included a weekly notification provision to accommodate small vessels that fish closer to shore that was, at least in part, based upon the practices deployed for the CA I Hook Gear Haddock SAP. That weekly notification requirement is implemented through this final rule.

Effort Controls

Comment 32: One commercial fisherman indicated that the Amendment 16 effort controls would pose a serious economic burden on common pool vessels. He suggested that, because Day gillnet vessels do not catch much flounder, they should not be subject to further effort controls under this action. The NEHFA expressed similar concerns, stating that such effort controls will eliminate the GOM cod hook fishery and might cause a derby fishery.

Response: The Amendment 16 effort controls are necessary to reduce F for a number of overfished stocks, most notably cod and pollock, species that are caught by both gillnet and hook gear. F on GOM cod must be reduced by 40 percent, while F on pollock must decrease by 73 percent compared to the F from catch in FY 2008 to achieve the conservation objectives of this action. Therefore, effort controls on these two gear types are necessary to end overfishing and rebuild these overfished stocks. Economic impacts associated with effort reductions to achieve the

conservation objectives of the FMP and applicable law are unavoidable. The analysis prepared for this action suggests that these effort controls would result in greater impacts on gillnet vessels than other gear types, but that impacts on hook vessels would be the least affected among all gear types. However, Amendment 16 strove to minimize the economic impacts of management measures without compromising rebuilding efforts by removing obstacles that limit participation in the DAS Leasing and Transfer Programs and sectors, increased access to haddock resources, and increased trip limits for some stocks, among other provisions. The potential for a derby fishery in the common pool was a concern expressed by several fishermen upon the adoption of Amendment 16 by the Council in June 2009. Based upon these concerns, the Council provided the Regional Administrator with the authority to revise DAS counting rates and trip limits for NE multispecies stocks under FW 44 to ensure that the ACLs available to the common pool are not prematurely harvested and to minimize the potential for a derby fishery in the common pool.

Comment 33: CLF and CCCHFA suggested that small gillnet boats will be disproportionately burdened by the 24-hr DAS counting measure for the common pool. They also indicate that this measure causes safety concerns, and recommended that the Council evaluate the impacts to small day-boat fishermen if this provision is implemented.

Response: The Amendment 16 analysis indicates that small gillnet vessels will be more affected by 24-hr DAS counting than larger vessels and vessels using other gear types. Despite the different impacts on vessels of different sizes and gear types, all vessels will be subject to the same effort controls, and this measure does not discriminate between permit holders from different states. The 24-hr DAS counting measure more accurately reflects the manner in which DAS allocations were first calculated in the FMP, and is designed to end overfishing and rebuild overfished stocks consistent with the conservation objectives of the FMP and the requirements of the Magnuson-Stevens Act. During previous actions, safety concerns were raised regarding differential DAS areas because vessels could be encouraged to fish farther from shore. There is no evidence to support claims that changes in DAS counting rates affect fishing behavior in ways that would compromise safety, and there is no evidence that the measures implemented by this action would compromise safety any more than previous management measures, as described in Section 7.6 of the FEIS. Examination of historical fishing patterns in the Day gillnet fleet suggest that, despite being charged more DAS than actually fished, many vessels elect to return to port early to reduce operational costs. This suggests that it is not likely that the 24-hr DAS counting measure would compromise vessel safety. Moreover, there is nothing in this measure that requires a vessel to operate in an unsafe manner to catch or harvest fish. Therefore, NMFS concludes that this measure is consistent with National Standards 4 and 10.

Comment 34: The NSC and associated members stated that the impacts of the common pool measures are not properly documented in the FEIS and that makes it difficult for the public to evaluate the impacts and comment on the proposed measures.

Response: The impacts of the common pool measures are thoroughly documented in Section 7.0 of the FEIS. Because of uncertainty in the degree and scope of participation in sectors, the FEIS analyzed the impacts of common pool measures assuming that all vessels would participate in the common pool. This is a worst-case scenario, necessary to ensure that common pool measures will effectively meet the conservation objectives of this action, as noted in the FEIS. As highlighted earlier in this preamble, the impact of Amendment 16 measures can only be fully understood by considering other related actions, namely FW 44 and the final rule to approve sector operations plans. Accordingly, a more accurate evaluation of the likely impacts of common pool measures can be found in the EA prepared for FW 44, as that action revises some of the common pool measures in Amendment 16, specifies the ACLs for FYs 2010–2012, and evaluates common pool impacts based upon sector rosters submitted to NMFS as of September 1, 2009. The EA for that action is available from the Council (see **ADDRESSES**).

Comment 35: CLF supported the implementation of RGAs under this action.

Response: This action implements RGAs to create incentives to fish more selectively on GB and SNE, and to reduce the catch of overfished stocks such as cod, pollock, witch flounder, SNE/MA winter flounder, and SNE/MA yellowtail flounder.

Comment 36: Ten commenters, including seven commercial fishermen, AFM, NSC, and the Sustainable Harvest Sector supported the GOM Haddock Sink Gillnet Pilot Program, stating that it was the only way to access abundant resources of GOM haddock due to the fact that 6.5-inch (16.51-cm) mesh gillnets cannot effectively catch haddock. They suggested that there are sufficient controls to control mortality on affected stocks. Three commercial fishermen, AFM, and NSC suggested that if this pilot program is disapproved, a process for consideration of sector exemption requests for relief from gillnet requirements should be provided. CLF expressed concern about the impact of this pilot program on wolffish, considering that wolffish migrate through the proposed pilot program area.

Response: This pilot program would have allowed vessels on a fishery-wide basis to target haddock while using 6-inch (15.24-cm) mesh gillnets, which is less than the minimum mesh size currently required, from January through April. As stated in the preamble to the proposed rule, NMFS considers this pilot program a SAP under the FMP, as it would have provided access to regulated multispecies that would otherwise be prohibited. According to Amendment 13, SAPs are intended to facilitate the targeting of healthy stocks, without compromising efforts to end overfishing or rebuild overfished stocks by using selective gear or fishing when interaction with stocks of concern (i.e., stocks that must have fishing mortality reduced to end overfishing or rebuild the overfished stock) are minimized. Research cited in the Amendment 16 FEIS to support this pilot program indicated that the catch of the target species (haddock) was too low to evaluate the selectivity of gillnets for haddock adequately, while the catch of cod and pollock was too high to reasonably conclude that this pilot program would not have an adverse impact on these overfished stocks. During this experiment, only 71 haddock were caught, while 264 cod and 873 pollock were caught. The report concludes that "bycatch of cod is likely to be a challenge for a directed springtime haddock fishery on this portion of Jeffreys Ledge," that "make(ing) a regulatory change based upon this study alone (is) unwise," and that "further work must be done on avoiding cod bycatch if a haddock gillnet fishery is to be reestablished in this area" (Marciano, *et al.,* 2005). Researchers suggest that gear modifications that raise the webbing of gillnets several feet off the bottom would enhance the selectivity of gillnet gear and promote the objectives of this pilot program. While this work was reportedly conducted in 2006, a final

report of the work has not been made available, and, thus, its results have not been used to enhance the effectiveness of the proposed pilot program. As this research demonstrates, gillnets are effective at catching both pollock and cod, stocks that require reductions in F to rebuild. Section 7.2.1.3.1.4 of the FEIS indicates that, if the catch rates of these species remain the same or increase under the proposed pilot program, F on these species may increase. While the FEIS also indicates that F might decrease if catch rates decrease, the FEIS does not provide any evidence that catch rates of cod and pollock would actually decrease as a result of using smaller mesh in this program. The research used to support this pilot program, and recent landings data, indicate that haddock catches by gillnet gear in the GOM are minimal in January and February, and peak in March. However, large amounts of both cod and haddock are regularly landed in January and February. This suggests that this pilot program, as proposed, would encounter larger amounts of cod and pollock early in the proposed season, while haddock catch rates would not increase until later in the season. As a result, the proposed pilot program could either maintain or increase catches of these species compared to current measures, particularly considering the proposed use of smaller mesh, as also suggested in the FEIS. Thus, this program could undermine rebuilding programs for these stocks without substantially increasing the catch of haddock. Based upon the above information, NMFS determined that the proposed pilot program was inconsistent with National Standards 1 and 9 because it could increase catch and fishing mortality, and may lead to excessive discards of overfished stocks of GOM cod and pollock. Moreover, it was inconsistent with the FMP provisions, including the SAP provisions outlined in Amendment 13 and Objectives 3 (constrain fishing mortality to levels compliant with the Sustainable Fisheries Act), 4 (prevent overfishing), and 10 (minimize bycatch) of the FMP. Therefore, this proposed pilot program was disapproved under Amendment 16 and is not implemented by this action. The Council could revise the proposed pilot program in a future action to better reflect months when low catch rates of cod and pollock correlate with high catch rates of haddock (i.e., March and April) to maximize opportunities to increase the catch of haddock without unnecessarily increasing mortality on cod and pollock. It also appears that elements of this program could be used to increase access to haddock on a smaller, more controlled scale by sector vessels, without unnecessarily compromising efforts to eliminate overfishing and rebuild overfished stocks of cod and pollock. Therefore, NMFS would consider approval of such opportunities for sectors through another means, and will work with the Council to explore such possibilities, including granting additional exemptions to approved sectors through an additional rulemaking consistent with the Administrative Procedure Act.

DAS Leasing and Transfer Programs

Comment 37: CLF expressed general support for revisions to the DAS Leasing and Transfer Programs, while the UNFA suggested that vessels not fishing in sectors should be allowed to lease their landings history percentage (presumably PSC) to other sector vessels.

Response: Revisions to the DAS Leasing and Transfer Programs are necessary to increase participation in these programs to help mitigate the economic impacts of continued effort controls and increase the economic efficiency of vessels to the extent practicable. Therefore, this action implements the proposed revisions to these programs. NMFS does not agree that common pool vessels should be allowed to lease PSCs to other vessels, particularly to vessels that are participating in sectors. PSC is not a commodity or allocation unto itself that can be traded among vessels, but rather a characteristic of the permit. A permit's PSC can only be used to contribute to the ACE allocated to a sector through the participation of that permit in a particular sector. Without further details about how to implement such a measure, the suggestion by UNFA implies that a common pool vessel could fish under its DAS, but allow another vessel to lease its PSC to fish under a sector. This would essentially double count the fishing history associated with each common pool permit because it would increase the PSC and, therefore, ACE available to sector vessels without also decreasing the available ACL specified for the common pool caused by the transfer of that PSC. This could lead to excessive effort and, possibly, overfishing in the fishery. Therefore, the suggestion by the UNFA is not implemented in this final rule.

Comment 38: Three commercial fishermen and the AFM supported the elimination of the DAS Transfer Program's conservation tax. One of these fishermen and the AFM suggest that catch history for other permits should be preserved upon transfer to another vessel, even if duplicate permits are voluntarily relinquished.

Response: This action eliminates the DAS Transfer Program conservation tax. The DAS Transfer Program was originally implemented in Amendment 13 as a means to reduce capacity in the fishery. Preserving the fishing history of permits that are voluntarily relinquished would not reduce capacity in the fishery, as originally intended. Because the Council did not propose such a provision in Amendment 16, NMFS cannot implement such a revision through this final rule.

SMPs and SAPs

Comment 39: The CCCHFA supported the continuation of the delayed opening of the Eastern U.S./Canada Area to trawl vessels until August 1, and opposed the continuation of the 5-percent cap of the Eastern U.S./Canada Area GB TAC that could be landed by hook gear vessels prior to August 1.

Response: The delayed opening of the Eastern U.S./Canada Area to trawl vessels and its associated limitation on the amount of Eastern GB cod that could be harvested by hook gear vessels is a measure that was previously implemented through existing Regional Administrator authority as part of the yearly specifications package implementing U.S./Canada Management Area TACs. Accordingly, these comments are more appropriate for FW 44, the action that would implement ACLs and U.S./Canada Management Area TACs for FY 2010. As proposed, FW 44 would delay the opening of the Eastern U.S./Canada Area to trawl vessels until August 1, but would retain the existing cap on the amount of Eastern GB cod that may be caught by hook vessels prior to August 1.

Comment 40: The CCCHFA supported the renewal of the Eastern U.S./Canada Haddock SAP. One commercial fisherman, AFM, and the Sustainable Harvest Sector suggested that sectors should be able to use any gear type in this SAP, provided the individual sectors are allocated ACE for stocks caught in the SAP area.

Response: Consistent with the approved measures in Amendment 16, this final rule allows sectors to use any gear type in this SAP, provided the sector is allocated ACE for all stocks caught in this SAP, and renews this SAP indefinitely.

Comment 41: Two commercial fishermen, AFM, and the CCCHFA supported the expansion of both the CA I Hook Gear Haddock SAP area and season. One other commercial fisherman and the AFM recommended

that sectors should be able to use any bait they choose in this SAP, considering all catch would count against the sector's ACE for each stock.

Response: The expansion of the CA I Hook Gear Haddock SAP is implemented through this final rule. As explained in the preamble to the proposed rule, the bait restrictions originally adopted by the Council in FW 41 were inadvertently omitted from the regulations implemented by the final rule for that action. This final rule implements these bait restrictions to ensure that the regulations accurately reflect provisions adopted by the Council in FW 41. Because the Council did not provide for a specific exemption from such bait restrictions in Amendment 16, NMFS cannot provide a sector exemption from the bait requirements for this SAP in this final rule. The Council could reconsider its decision, however, any changes, would be implemented through a future action.

Comment 42: One commercial fisherman and the AFM support proposed revisions to the CA II Yellowtail Flounder/Haddock SAP. This fisherman recommended that NMFS revise the final regulations to clarify that sector vessels fishing in this SAP may have other gear on board, provided it is stowed, and allow such vessels to fish in other areas on the same trip. The CCCHFA, however, only supported revisions to the CA II Yellowtail Flounder SAP if they were supported by similar standards of research as were required to approve revisions to the CA I Hook Gear Haddock SAP. Further, they supported increased access to haddock, but only by gear proven to selectively harvest that species—specifically hook gear.

Response: The proposed rule included revisions to the regulations at § 648.85(b)(3)(v) that would specify that vessels could fish inside and outside of CA II Yellowtail Flounder/Haddock SAP, provided they declared their intent to do so in accordance with instructions provided by the Regional Administrator and complied with the most restrictive DAS counting requirements, trip limits, and reporting requirements for the area fished. Further, the proposed rule included revised regulations at § 648.85(b)(3)(x) that would clearly note that other gear may be on board vessels participating in this SAP, provided it is stowed according to § 648.23(b). These proposed revisions are implemented in this final rule and, therefore, no additional changes to the regulations are necessary to address issues raised by the public. The CA II Yellowtail Flounder SAP was originally approved in Amendment 13 based upon research reviewed by the Council prior to the approval of that action. That research evaluated the catch of yellowtail flounder, cod, haddock, and other species using trawl gear in the proposed SAP area. Other research to support the Eastern U.S./Canada Haddock SAP using a haddock separator trawl, the expansion of the CA I Hook Gear Haddock SAP, and the development of the Ruhle trawl demonstrate that such gears can selectively target haddock, while reducing the catch of cod and flatfish species. Although these gears had different successes at increasing the selectivity of the fishery, they were all evaluated in the same manner and all contribute to furthering the objectives of the FMP and the Magnuson-Stevens Act. Only gear supported by applicable research was approved for use by the Council in Amendment 16, as listed in Table 182 of the Amendment 16 FEIS.

Recreational Measures

Comment 43: CLF expressed general support for recreational measures, but three commercial fisherman, NSC, and the NHCFA suggested that the recreational allocation of GOM cod and GOM haddock was unfair and inconsistent with National Standard 4, stating that to be equitable, allocations between commercial and recreational fishermen, and between sectors and common pool vessels need to be the same and cannot benefit one group to the detriment of another group. One individual opposed any allocation to the recreational fishery on the grounds that it would negatively impact the private angler from accessing fishery resources.

Response: As stated in the August 12, 2009, letter from Council Chairman John Pappalardo to the Secretary regarding the Council minority report on the adoption of Amendment 16, the allocation of available resources between commercial and recreational components of the fishery are entirely separate from and unrelated to the calculation of PSCs that establish sector ACE allocations. The use of the more recent time period for the recreational allocation in Amendment 16 reflects the Council's consideration of the potential inaccuracy of recreational catch data in earlier years and the current conditions in the fishery. The more recent time period is considered to be more representative of where the fishery is at present, and where it is likely to be going in terms of the proportions caught by the two components of the fishery. Accordingly, NMFS does not find an inconsistency between the different standards for allocating ACE versus the recreational allocation of groundfish. The National Standard 4 Guidelines indicate that management measures must not discriminate between residents of different states, and that any allocations of fishing privileges must be fair and equitable to all fishermen and reasonably calculated to promote conservation. Amendment 16 establishes a process to allocate portions of the ACLs of GOM cod and GOM haddock to the recreational fishery based upon the proportion of recreational catch between FYs 2001 and 2006. Both commercial and recreational catch are evaluated using the same time period, a period during which both fisheries were subject to restrictions on the catch of such stocks, to determine the amount of these stocks caught by each fishery. These allocations are necessary to provide accountability to every segment of the fishery that catches groundfish, and to develop more segment-specific management measures that more effectively reduce F for such segments. Therefore, this measure is consistent with National Standard 4, as described in Section 9.1.1 of the Amendment 16 FEIS. Amendment 16 did not distribute the recreational allocation of GOM cod and GOM haddock between the private angler and charter/party components of the recreational fishery. Therefore, this action does not inhibit either component of the recreational fishery from catching these stocks. However, the Council specifically included the capacity to develop separate AMs for the private and charter/party components of the fishery to ensure that excessive catch by one component does not compromise the continued access to these resources by the other component.

Sector Measures

Comment 44: Two commercial fishermen, EDF, PEW, CLF, and TNC expressed strong general support for sector management measures proposed in Amendment 16.

Response: For the reasons specified in Amendment 16 and the preamble to the proposed rule for this action, NMFS approved, and this final rule implements, the Amendment 16 sector measures.

Comment 45: Four commercial fishermen opposed sector management in general, stating that it is akin to privatizing fishery resources and will lead to the elimination of the small vessel fleet. These individuals preferred to continue to operate under the DAS management regime.

Response: Sector management does not privatize fishery resources, or lead to the elimination of the small vessel fleet. A sector is a group of persons holding limited access permits that

agree to work together for a specific period of time and under specific regulations to harvest a share of the available ACLs. Thus, sector allocations are temporary, changeable, and do not constitute a property right in the most common use of the term, or even an allocation of fishing privileges, as such terms are used in the Magnuson-Stevens Act. Under Amendment 16, each vessel may choose to enter a sector, or fish under the common pool and remain subject to DAS management. It is up to each individual vessel owner to decide which management regime would offer the most benefits to him/her. Because small vessels fish closer to shore and will likely be more adversely affected by the 24-hr DAS counting provisions in Amendment 16 than larger vessels, sector management may actually offer a better means to remain economically viable compared to DAS management, because sectors are universally exempted from DAS restrictions. Small vessels can form their own sector if they so choose, or enter another existing sector if it offers sufficient benefits.

Comment 46: The NEHFA commented that it is impossible for limited access Handgear A vessels to make a profit under sector management due to the costs to enter, administer, and monitor sector operations. This group recommended that Handgear A vessels should be exempt from all sector measures that require vessels to pay any associated costs, and suggested that Amendment 16 is inconsistent with National Standard 7 in that it does not minimize costs and requires Handgear A vessels to comply with all of the sector provisions. Finally, the NSC and three associated commercial fishermen indicated that the fishing industry cannot afford to pay for all of the sector management costs and must rely upon Federal funding to remain economically viable. The Northeast Coastal Communities Sector also noted that NMFS needs to ensure that the dockside monitoring costs for all sectors are fully covered for FY 2010 and that no individual sector be allowed to carry a balance of funds into 2011 if another sector has insufficient funds to over their dockside monitoring.

Response: Amendment 16 anticipated a number of costs associated with sectors, including costs to join a sector and pay for a sector manager, and costs associated with monitoring and reporting provisions. Amendment 16 includes estimates of the costs associated with sector measures. The Council believed that these provisions are necessary to administer and effectively monitor sector operations, and that the benefits of transitioning from the current effort control system to a quota management system under sectors outweigh the costs associated with sector provisions. Under Amendment 16, the Council specified that the fishing industry would pay for the costs associated with sector provisions, and did not provide for alternative funding sources. While many of the administrative and monitoring costs associated with sector operations during FY 2010 will be paid by NMFS through Congressional appropriations dedicated to supporting Sector development, it is unclear whether such funding will remain available to support sector operations in future FYs. Additional funding has been made available from individual states, as well as from several environmental groups, to support individual sector development. If such funding from one or more of these sources is no longer available, the fishing industry will be responsible for paying these costs. Some management measures considered in Amendment 16 were not selected in part because of concerns over the costs and burdens of administering the program. The costs associated with 100-percent at-sea and dockside monitoring coverage were deemed to outweigh the benefits expected from such measures. Therefore, this action minimized costs to the extent practicable, consistent with National Standard 7. As discussed in the response to Comment 41, each individual vessel owner must choose which management regime would provide the most benefits based upon his/her intended operations. Further, if costs to join an already existing sector are considered too high, vessels may form their own sector with similarly situated vessels.

The NMFS funding available to help offset costs associated with dockside monitoring during FY 2010 have been awarded by grant to a third party, GMRI, who is working directly with sector representatives to ensure the funds are distributed equitably to each sector relative to their particular monitor needs. Variables affecting dockside monitoring costs include the volume of catch, the number of trips, the need to provide service to remote ports, the need for roving monitors, or any combination of the above. However, these costs are difficult to estimate without full knowledge of how fishing operations will be executed during FY 2010. The amount of the total grant to be distributed to sectors exceeds the current estimated total cost of dockside monitoring for all of the sectors. If necessary, funds can be shifted to optimize their effectiveness. However, should dockside monitoring costs exceed the amount of the grant, the sectors will be responsible for paying the additional costs, consistent with Amendment 16.

Comment 47: The Northeast Coastal Communities Sector stated that NMFS should establish a minimum threshold requirement for dockside monitoring to ensure that vessels that land low amounts of fish for each trip are not subject to unnecessarily high dockside monitoring costs, particularly for small ports in eastern Maine where the low availability of regulated species does not result high volumes of fish being landed for each trip.

Response: As noted above in the response to Comment 46, the costs associated with dockside monitoring are affected by several variables, including the amount of fish landed, or the amount of time the dockside monitor is required to observe landings. If dockside monitoring costs are based primarily upon these factors, it is possible that the costs will be lower for smaller volumes of fish landed by vessels operating in eastern Maine than for other vessels landing higher volumes of fish. However, Amendment 16 did not propose a minimum threshold of landings that would exempt a trip from the requirements to use a dockside monitor. Instead, Amendment 16 specified that dockside monitoring coverage will be randomly assigned to 50 percent of sector trips. Because Amendment 16 did not include a specific exemption from the dockside monitoring provisions for small volumes of fish landed, NMFS has not revised the dockside monitoring provisions implemented by this final rule.

Comment 48: The NHCFA, UNFA, and one seafood dealer commented that sector development was rushed and, therefore, should be delayed until data used to calculate sector allocations can be corrected. NHCFA specifically objected to the fact that vessels had to comply with sector provisions before they were implemented, while the seafood dealer suggested that sector measures will force many vessels and shoreside infrastructure companies out of business.

Response: Sector measures have been in place since 2004 with the implementation of Amendment 13, and the revised sector measures of Amendment 16 have been under development for over 3 years. These revised sector measures were the subject of extensive debate during this time, including numerous meetings open to the public. Therefore, NMFS disagrees that the implementation of sectors has

been rushed and should be delayed. In fact, the Council was originally scheduled to implement Amendment 16 at the start of FY 2009 on May 1, 2009, but delayed the action to further develop Amendment 16, including its sector measures. Therefore, further delay of sector implementation is not warranted to further develop sector provisions. Although NMFS recognizes that some of the landings data used to calculate PSCs are incorrect, these data represent the best data available to NMFS. A process to correct landings data and, therefore, PSCs is currently underway. However, it may not be possible to correct all landings data and be able to recalculate PSCs and associated sector ACEs in time for implementation on May 1, 2010. Because any revisions to a single PSC requires the recalculation of PSCs for all other vessels, updates to PSCs can only be implemented at the start of a FY. Otherwise, implementing such corrections during the middle of the fishing year could result in disruptions to the fishery that could compromise the ability of the fishery to effectively meet the conservation objectives of the FMP, especially if such corrections reduce the PSCs for a particular sector and cause that sector to exceed its ACE based upon ACE harvested prior to the correction. Delaying the implementation of sector measures until May 1, 2011, would mean that vessels whose PSCs were accurate would be denied the benefits of fishing under sectors at the start of FY 2010. Any corrections to the landings data and PSCs are relative and would change an individual vessel's PSC, but would not increase the amount of fish that could be caught in a particular FY. To ensure that the fishery can take advantage of the benefits associated with sectors as quickly as possible, this action implements sector measures effective May 1, 2010. Any updates to PSCs are intended to become effective for the start of FY 2011 on May 1, 2011. The sector-related deadlines in Amendment 16, which have been communicated to the public since the Council adoption of Amendment 16, are necessary to ensure that sector measures can be implemented by the start of the 2010 FY on May 1, 2010. While these deadlines are not mandatory, NMFS has made the industry aware that failure to comply with these deadlines could result in the delayed implementation of individual sectors beyond the start of the 2010 FY. Existing sectors require participants to land at particular ports, thereby preserving local fishing communities and shoreside infrastructure. Similar provisions could be implemented in future sector operations plans. If such provisions are included, Sector management could actually preserve the viability of shoreside infrastructure. Evidence suggests that the existing sectors were able to increase the economic efficiency of vessel operations and realize higher vessel revenue streams. Because Amendment 16 provides further opportunities to increase the economic efficiency of vessel operations through additional sector exemptions, increased access to haddock through revisions to existing SAPs, and other measures, it is possible that sector provisions implemented by this action will enable more vessels to remain economically viable.

Comment 49: The NHCFA, Food and Water Watch (FWW), and the DMF claimed that sectors are analogous to an IFQ program and require a referendum under the Magnuson-Stevens Act. Therefore, this group claimed that Amendment 16 is in violation of the Magnuson-Stevens Act because it failed to develop a referendum to implement sectors. Further, the NSC, three associated commercial fishermen, and FWW believe that sectors are a type of LAPP and, therefore, should have been developed pursuant to the requirements in section 303A of the Magnuson-Stevens Act.

Response: The Magnuson-Stevens Act explicitly states that a sector allocation is not an IFQ for the purposes of the referendum requirement. Moreover, NMFS has determined, as explained in a September 1, 2007, letter to the Council, that the sector program, as currently implemented in the FMP, is neither an IFQ program, nor a LAPP program as those terms are used in the Magnuson-Stevens Act. Further, none of the revisions to the current sector program in this final rule change the conclusions reached in that letter. To summarize the September 1, 2007, letter, according to the definition of a LAPP in the Magnuson-Stevens Act, a LAPP involves the issuance of a "Federal permit issued as part of a limited access system under section 303A to harvest a quantity of fish * * * representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person." Individual sectors are not issued a permit, they are not allocated a portion of the TAC, and they are not clearly "persons" eligible to hold a LAPP under section 303A(c)(1)(D). Therefore, NMFS does not believe that sector measures, as approved in Amendment 16 and implemented by this action, are LAPPs that must comply with the requirements in section 303A of the Magnuson-Stevens Act.

Comment 50: CLF recommended that sectors should be categorically excluded from future NEPA analysis based upon the analysis already contained in the Amendment 16 FEIS, and that NMFS should prepare the appropriate analysis of environmental impacts with the assistance of individual sectors.

Response: The analysis of sector formation in the Amendment 16 FEIS was never intended to address the particular operations of individual sectors, but rather to evaluate the overall impacts of the formation of sectors and their compliance with other sector-specific measures proposed in Amendment 16. Another, more detailed analysis of the specific impacts associated with the intended operations plans and rosters of participating vessels for each FY is required to allow the Council, NMFS, and the public to evaluate the expected impacts of these sectors and to comply with NEPA. Information on the vessels participating in each sector or the intended operations was not available at the time the Amendment 16 FEIS was being prepared and finalized. Therefore, a supplemental analysis is necessary to fully comply with NEPA. To assist new sectors in developing such analysis, NMFS hired contractors to work directly with NMFS and individual sectors to prepare EAs for Sector operations in FY 2010. In addition, NMFS worked very closely with sector proponents to ensure that such documents comply with NEPA and other applicable law. NMFS will continue to offer support in the future, although funding to draft future EAs may not be available. Upon the completion of this initial analysis of sector operations, if sector participants and operations in future years are similar to those incorporated in the original analysis, more abbreviated NEPA compliance may be possible in future FYs.

Comment 51: NAMA recommended that the Council encourage future sectors to form based on the concept of area management.

Response: Sectors may form for any number of reasons, and may adopt area-specific management measures if they so choose. In fact, the existing sectors were originally restricted to fishing in specific areas surrounding the communities in which they were based. The Council did not mandate similar area-based restrictions in Amendment 16 to provide the maximum flexibility for the formation of sectors.

Comment 52: The CCCHFA supported provisions in Amendment 16 that insulate sectors from the overages of

common pool vessels. However, they observed that while sector vessels were subject to overage penalties if participating vessels left a sector following an overage, common pool vessels would not be subject to similar penalties. They contended that Amendment 16 should include overage penalties that follow common pool vessels if they join a sector in the FY after they contributed to an overage of the common pool allocations of a particular stock.

Response: The absence of an overage penalty for common pool vessels that contribute to an overage of common pool ACLs, but join a sector for the next fishing year does not compromise the ability of Amendment 16 measures to trigger applicable AMs and ensure that overfishing does not occur. Further, the deadlines to join a sector for the next FY necessitate that a vessel owner must decide to join a sector prior to September 1 of each year. Thus, the decision to join a sector will likely be made long before it is known whether there will be any overages of ACLs allocated to the common pool. Furthermore, a sector could specify conditions under which vessels may join that sector, including conditions that would preclude participation in a sector if a vessel fished in the common pool and contributed to an overage of common pool ACLs. Moreover, Amendment 16 does not include any overage penalties for common pool vessels if they contributed to an overage of common pool allocations, but later join a sector to avoid the increase in DAS counting associated with the differential DAS counting AM. NMFS can only approve or disapprove Amendment 16 measures, and cannot revise or add measures. However, the Council could consider adding such penalties in a subsequent action. Therefore, no common pool overage penalties are implemented by this final rule.

Comment 53: The NSC, three associated commercial fishermen, and the Sustainable Harvest Sector recommended that sectors should not be required to provide discard estimates as part of their weekly sector catch report. Instead, these commenters wanted to use the discard estimates calculated by NMFS to minimize the burden on sectors and increase the coordination of catch data used to monitor sector ACE.

Response: As part of a sector's weekly catch report, Section 4.2.3.5.3 of Amendment 16 states that sectors, or a private contractor hired to facilitate monitoring sector operations, must apply discard estimates to landings and deduct catch from sector ACEs. This section also requires that sectors develop an "adequate monitoring system and demonstrate to NMFS that discards can be accurately monitored and counted as part of the ACE, at the sector's expense" as part of a sector's yearly operation plan. The Council determined that these elements are important for sector managers and the sectors themselves to be confident that all sectors are held to the same standard. Thus, each sector will be evaluated on its capacity to accurately monitor sector catch and prevent sector ACEs from being exceeded. Further, even though NMFS will provide the applicable discard rates to individual sectors, sectors may have more timely and accurate data regarding landings by gear type than is available to NMFS, particularly for vessels that fish with more than one gear type on a particular trip. This is because data regarding whether vessels fished with multiple gear types on the same trip are not captured through the VMS declaration requirements specified in this action, but will be reflected in VTR data. Even though the frequency of VTR submissions has been increased through this action, such data will not be immediately available to NMFS due to the time required to receive, process, and validate VTRs under current NMFS protocols. However, it is likely that sectors will have such data on a more timely basis due to proximity to affected vessels and the availability of sectors to rely upon electronic VTR software, developed in part to facilitate sector catch monitoring, to provide much of the data necessary to monitor sector landings. While NMFS will concurrently monitor sector catch using data available to NMFS, it would be inconsistent with Amendment 16, as well as the intent of sector management itself (i.e., self-management), to have NMFS calculate sector discards and apply it to sector landings on a weekly basis to determine sector catch, as Amendment 16 clearly indicates that it is the sector's responsibility to accurately monitor sector catch so that sector ACEs are not exceeded.

Comment 54: The NSC and three associated commercial fishermen commented that the weekly sector reporting requirements are burdensome on sectors. To reduce such burdens, NSC felt compelled to develop and utilize electronic reporting mechanisms that have yet to be authorized by NMFS, or that were evaluated in Amendment 16. NSC and its members recommended that NMFS approve the use of electronic VTRs for sector operations.

Response: As explained in the response to Comment 25, to date, the Regional Administrator has not determined that the existing electronic VTR technology is sufficient to meet the existing reporting requirements, but could authorize the use of specific systems once such a determination is made.

Comment 55: The CCCHFA supported Amendment 16 requirements for sectors to prepare an annual report. However, the Sustainable Harvest Sector opposed the requirement to include the catch of all species. This group contended that a 1-year snapshot of sector catch of other species is insufficient to understand shifts in effort to other fisheries. Instead, they recommended using NMFS's data to evaluate shifts in effort, as they include many years of landings and are more effective at determining if any shifts in effort have occurred. Further, this group suggested that the list of enforcement actions should be limited to only those resulting from a sector trip.

Response: The purpose of the annual sector report is to identify the full complement of sector operations conducted during a FY to allow the Council, NMFS, and the public to evaluate the biological, economic, and social impacts that such operations had on the NE multispecies fishery and other fisheries in which participating vessels were engaged. Although alternative sources of such data exist, it is important for the sector to specify how much catch the sector believes was caught in other fisheries, as it provides a means to not only evaluate shifts in effort, but also the efficacy of sector catch monitoring practices during a particular FY. Further, by summarizing the fishing activities of sector vessels, the public can understand the strategies employed by sectors to maximize the benefits of fishing operations. Furthermore, it would be inconsistent with the provision adopted by the Council in Amendment 16 to rely upon NMFS data and exempt sectors from submitting an annual report detailing the catch of all species. Reporting all enforcement actions associated with sector vessels, including those associated with other fishing activities, is critical to understanding how the sector operates and if sector operations are having an adverse effect on any fisheries. Therefore, this final rule does not revise the sector annual report requirements.

Comment 56: The NEHFA suggested that Handgear A vessels did not receive a fair and equitable allocation of available resources because measures in effect during the allocation period selected to determine PSCs, including GOM Rolling Closure Areas and trip

limits, reduced the amount of fish that such vessels could catch. Therefore, this group argued that the Amendment 16 PSC measures are inconsistent with National Standard 4. The NHCFA, PERC, NSC, and three commercial fishermen also contended that PSC measures are inconsistent with National Standard 4 because different time series were used to benefit individual groups, arguing that the allocation measures must be the same for all vessels, including recreational and commercial vessels and sector and non-sector vessels. Further, NHCFA commented that the allocation periods used reflect a time when GOM haddock abundance was depressed, causing PSC to be low and minimizing the potential that vessels will be able to access this stock once rebuilt. Furthermore, they contended that such measures would jeopardize the continued participation of traditional fishing communities, contrary to National Standard 8, while an elected official stated that sector allocations must be sufficient to sustain the fishery and reduce impacts to fishing communities. PERC specifically noted that the PSC measures would punish small vessels that had fewer landings during this period than other vessels. One other commercial fisherman supported using landings history alone for FYs 1996–2006, including for SNE/MA winter flounder once an allocation of that stock is appropriate, while the CCCHFA supported using landings of GB cod during FYs 1996–2001 for existing sectors. PERC further recommended that the Council establish a method to reallocate rebuilding stocks that includes set-asides in the initial allocation process that would accommodate "segments of the fishery that were marginalized during the transition to quotas."

Response: Many of the issues raised by the public in opposition to the sector allocation measures in Amendment 16 were considered either directly or indirectly by the Council prior to adoption of these measures, as detailed in the FEIS and in the Council Chairman's August 12, 2009, letter to the Secretary regarding the minority report for the adoption of Amendment 16. Under Amendment 16, all vessels are subject to the same sector allocation measures (i.e., PSC calculations) for all stocks with the exception of GB cod. The 11-yr period for allocation of most stocks (i.e., 1996–2006) is meant to minimize the impact on catch history that results from changes to groundfish regulations, such as trip limits and area closures during this period. For GB cod, a different allocation window was adopted to preserve the business plans developed by participants in those existing sectors and to maintain the value of investments in permits made by such participants by maintaining Council decisions regarding the allocation of GB cod from previous management actions. The August 12, 2009, letter noted that 1996–2006 baseline to calculate PSCs for all stocks except GB cod was considered the "best method for ensuring a fair and equitable allocation using as much sound data as possible," while promoting "stability in the fishery and fostering an environment where sectors can create efficient and effective business plans." This letter references that Amendment 13 utilized landings histories during FYs 1996–2001 to establish the existing sectors' allocations of GB cod and essentially froze this baseline once it was created. In a similar manner, the Council indicated its intent to freeze catch history for newly formed sectors as of the implementation of Amendment 16 to preserve the allocation decisions made in Amendment 13 and promote economic stability in the fishery by increasing the confidence that allocations are unlikely to change in the future. Existing sectors require participants to land at particular ports, thereby preserving local fishing communities and shoreside infrastructure, consistent with Goal 4 of the FMP. In addition, because these sectors represent cohesive groups of smaller vessels fishing with hook and gillnet gear, preserving existing sector allocations promotes the continuation of a diversified fishery in both size and gear type near Chatham, MA, consistent with Objective 7 of the FMP. Revising existing sector allocations by not treating GB cod sector allocations differently than other stocks could reduce fishing opportunities for these sectors, increasing costs and economic impacts to such sectors, and adversely affect associated communities. Therefore, the measures in Amendment 16 are justified based upon furthering the goals and objectives of the FMP, providing for the sustained participation of fishing communities, and minimizing the economic impacts on such communities. Finally, the use of different PSC baselines for different stocks resulted in only a small quantitative difference regarding the amount of GB cod PSC specified for participants in existing sectors. Sector allocations will be calculated in such a manner that only 100 percent of the GB cod ACL will be allocated in any FY, thereby ensuring that sector measures achieve the conservation measures of the FMP. Thus, the decision to use different allocation periods was not arbitrary, but specifically developed to provide stability and the sustained participation of vessels and fishing communities in the NE multispecies fishery without compromising efforts to rebuild overfished stocks, consistent with Goal 5 of the FMP.

Amendment 16 measures will allocate portions of the ACLs of GOM cod and GOM haddock to the recreational fishery based upon the proportion of recreational catch between FYs 2001–2006. These allocation measures are intended to reflect recent participation in the fishery in the form of recent landings of groundfish and to account for concerns over the inaccuracy of historic data on recreational catch. As summarized in the response to Comment 43, the more recent time period is considered to be more representative of where the fishery is at present, and where it is likely to be going in terms of the proportions caught by the both the commercial and recreational components of the fishery. The catch of each component will be evaluated using the same time period, a period during which both fisheries were subject to restrictions on the catch of such stocks, including trip limits, closed areas, size limits, and other provisions necessary to prevent overfishing and help rebuild overfished stocks. Because all fisheries were subject to measures designed to achieve the conservation objectives during the same allocation period, one group is not advantaged over the other, despite the fact that different allocation periods result in different allocations to various segments of the fishery, and all are provided the same access to rebuilt stocks, including GOM haddock, which is projected to have rebuilt in 2009. These allocations are necessary to determine the amount of these stocks caught by each fishery and provide accountability to every segment of the fishery that catches groundfish, and to develop more segment-specific management measures that more effectively reduce F for such segments.

Allocations between commercial and recreational fisheries and between sector and common pool vessels are designed to minimize the economic impacts on fishing communities without jeopardizing the conservation requirements of the Magnuson-Stevens Act, including preventing overfishing and rebuilding overfished stocks. Measures affecting either group have indirect economic impacts on supporting businesses within such communities, such as restaurants,

marinas, fish processors, ice and fuel suppliers, etc. An allocation of available resources among these groups facilitates the development of effective management measures for each group that can selectively address overages by one group, while avoiding unnecessarily penalizing the other group for such excessive catch due to implementing effort reductions on other groups, in contrast to effort reductions applied across the entire fishery in previous management actions. In doing so, this measure contributes to the overall effort of Amendment 16 to provide for the sustained participation of such communities in the groundfish fishery through the furtherance of sustainable fisheries, while minimizing the adverse economic impacts associated with broadly applied effort reductions that would result without an allocation of available resources to each group.

Based on the above, NMFS has determined that sector and recreational allocations under Amendment 16 are consistent with each other, the goals and objectives of the FMP, the Magnuson-Stevens Act, including National Standards 4 and 8. Thus, NMFS implements such provisions through this final rule. If the Council determines that it is appropriate to establish set-asides to address a particular management objective, including setting aside catch for research or to promote initial entry into the fishery, it could revise these allocation measures through a future action.

Comment 57: The CCCHFA supported sector-specific allocations for stocks managed by the Understanding.

Response: NMFS is implementing such allocations through this final rule. These allocations ensure that access to the Eastern U.S./Canada Area by common pool and sector vessels is not adversely affected by the actions of other sectors or the common pool. This is consistent with Objective 8 of the FMP to insure accountability in achieving fishery management objectives, and to distribute fishery access based upon recent participation in the fishery.

Comment 58: The NHCFA suggested that the Amendment 16 allocation measures fail to recognize investments in DAS and, thus, devalue DAS permits without a sufficient analysis of the impacts.

Response: Amendment 16 did consider other options for sector allocation that included either vessel capacity and/or allocated DAS as part of the allocation formula. These factors would have resulted in all vessels being allocated at least some PSC for some or all stocks, even though not all vessels actually fished for and landed groundfish during this period. As a result, such options do not reflect current participation in the fishery and would be inconsistent with the intent of this measure in Amendment 16. Section 7.5.1.2.3.3 of the FEIS discusses the economic impacts of PSC options adopted in Amendment 16 on those vessel owners that invested in permits to increase their access to DAS under the existing DAS effort controls. This discussion acknowledges that vessel owners may have invested in permits with allocated DAS, but little landings history in the area in which the owner has traditionally operated. Owners who invested heavily in permits with many DAS, but little landings history, could continue to participate in the common pool and be regulated by DAS instead of sector allocations. Thus, owners must make decisions as to which management system is most advantageous to them based upon opportunities presented by either management system. Therefore, Amendment 16 adequately considered the impacts on such vessels.

Comment 59: PEW, NHCFA, CLF, CCCHFA, and PERC opposed the removal of the sector allocation cap and recommended that NMFS retain the existing 20-percent cap, or develop suitable alternatives to ensure that phases in the allocation cap to avoid excessive shares in the fishery. These commenters claim that the absence of an allocation cap could compromise small-vessel operations due to consolidation of fishing effort by larger corporations, and that there is not a sufficient analysis of the potential consequences in Amendment 16, claiming that the absence of a cap could impact markets or cause unknown negative impacts. EDF also opposed removal of the cap because it believes that such a removal fails to address the goal of the FMP to preserve the day-boat fishery and that it would be arbitrary and capricious to implement a regulation that directly contravenes a stated objective of the FMP. Further, EDF argued that Amendment 16 is inconsistent with National Standard 4 because it fails to prevent an entity from acquiring an excessive share of the resource, although it acknowledged that an allocation cap is not the only means to address the requirements of National Standard 4. Although this group opposed the removal of the cap, it recommended that NMFS specifically not reinstate the existing cap due to disruptions in the fishery for FY 2010, but rather instruct the Council to develop an appropriate allocation cap in a future action. EDF also suggested that NMFS freeze permanent quota transfers until an allocation cap is implemented, pursuant to the authority granted in section 305(d) of the Magnuson-Stevens Act.

Response: Amendment 13 first implemented an allocation cap that prevented sectors from being allocated more than 20 percent of the yearly TAC for a particular stock in part due to perceived concerns over the possibility that one sector could lead to an excessive share of a particular stock and exert market control for that resource. National Standard 4 Guidelines provide useful guidance on whether removal of the allocation cap is inconsistent with the "excessive share" provision of National Standard 4. National Standard 4 Guidelines state that an " 'allocation' or 'assignment' of fishing privilege is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4." Amendment 16 does not directly or deliberately allocate any fishing privileges. Instead, Amendment 16, in addition to removing the allocation cap, establishes several new rules for sectors and identifies specific sectors that have been formed to operate under the revised sector rules. Sectors themselves are merely vehicles for allowing individual fishermen to voluntarily enter into an arrangement to fish under certain exemptions to the FMP based on their individual fishing histories. Nothing in Amendment 16 or the related actions of Framework 44 or the sector operations plan proposed rule actually allocate directly or even indirectly any new fishing privileges to individual fishermen, and, sectors themselves do not acquire any privileges that were not already in existence based on fishermen's preexisting histories. Therefore, sectors are not "acquiring" excessive shares of fishing privileges, as contemplated by National Standard 4. NMFS recognizes that the fact that one sector may have a significant cumulative total of ACE on a temporary basis for one fishing season may raise potential concerns for incidental allocative or market effects, and such possibilities should be closely monitored. However, commenters offer no explanation as to what constitutes an excessive share in the sector context

under National Standard 4 Guidelines, or which sectors fall into the excessive share category, nor do they show how the sector program will result in inordinate control on buyers or sellers in the market, a factor suggested in National Standard 4 Guidelines as evidence of an excessive share.

Analysis by the PDT during the development of Amendment 16 suggests it is unlikely that any one sector could accumulate a sufficient share of a stock to exercise market power over the rest of the fishery. Further, because sector ACEs are temporary in nature and depend upon the collective PSCs of participating vessels, no one sector will be allocated a permanent share of any resource. This further limits the ability of a sector to influence market conditions for a particular stock over the long term. Amendment 16 will allow sectors to trade ACE for use during that FY. This will minimize the influence of the initial sector allocation, including any cap on initial allocations, on market control, as a sector could acquire an unlimited amount of ACE from another sector by transferring ACE. Consolidation in the fleet has already occurred under the DAS management regime due to continued effort controls, DAS Leasing/Transfer Programs, and other provisions. It is possible to allow for consolidation in the fleet without compromising the diversity of the fleet. Maintaining a diverse fleet is one of the objectives of the FMP, and future Council actions could be directed to explicitly increase, or at least maintain, the existing diversity of the fleet. In fact, the PDT analysis of sector allocation caps specifically noted that an allocation cap could be used to address other objectives in the fishery. However, the Council elected not to do so in Amendment 16.

On balance, retaining the 20 percent would unquestionably have more negative impacts on the sector program than eliminating it in the context of current Amendment 16 measures and approve sectors. The elimination of the sector allocation cap has been considered by the Council since December 2007. Since that time, sectors have operated under the assumption that the allocation cap would be removed under Amendment 16. Accordingly, five sectors submitted rosters to NMFS that will result in ACE allocations that exceed the current 20-percent allocation cap, if the membership is maintained for FY 2010. If NMFS had disapproved the removal of the sector allocation cap in Amendment 16, the existing sector allocation cap would have remained in effect; NMFS could not have simultaneously disapproved the proposed Amendment 16 measure and eliminated the existing 20-percent allocation cap. If the 20-percent allocation cap were maintained, five sectors would either need to be disapproved under the sector operations plan proposed rule because they would exceed the 20-percent allocation cap for one or more stocks, or sufficient members of the sectors would need to be removed from the sector rosters to ensure that the remaining vessels would not cause the allocation cap to be exceeded. This would have meant requiring such vessels to fish in the common pool. Another alternative would have been to allow vessels removed from a sector to join together and operate under one of the sectors authorized by the Council that did not submit an operations plan to date. However, any sector that has not submitted an operations plan could not be approved by the start of FY 2010 on May 1. This would have resulted in tremendous disruption and economic impacts to the fishery for FY 2010, particularly for those sectors that would have had to be disapproved, or vessels that would have been forced to fish under the provisions of the common pool or another sector. Such a disruption in the fishery could compromise the ability of sector measures to achieve other goals of the FMP, including giving industry members greater control over their own fate; providing a mechanism for economics to shape the fleet, rather than regulations (while working to achieve fishing and biomass targets); minimizing bycatch; increasing economic efficiency; and transitioning the fishery from effort controls to quota management. Therefore, NMFS did not disapprove the Amendment 16 measure to remove the sector allocation cap. However, NMFS recognizes the potential legitimate concerns raised by the public, and has pledged in its letter to the Council announcing partial approval of Amendment 16, to work with the Council in addressing these potential problems of the incidental allocative effects of the sector program as well as individual permit holders acquiring excessive control of fishing privileges. To that effect, NMFS will work with the Council's Interspecies Committee to consider developing measures that would address the issue of sector ACEs as they relate to the FMP's social and economic objectives, the Council's sector management policy, the national policy on catch share management, and the requirements of National Standard 4, pursuant to a motion adopted by the Council on January 28, 2010.

The only mechanism that exists to allow the permanent transfers of quota is the DAS Transfer Program. If NMFS were to freeze this program, as recommended, vessels fishing in the common pool would also be prohibited from consolidating fishing effort and increasing the economic efficiency of vessel operations, as such vessels could participate in sectors during a future FY. This would conflict with the goals and objectives of the FMP, as well as requirements of the Magnuson-Stevens Act to reduce costs and economic impacts to vessels by requiring entities to maintain multiple operational fishing platforms and pay for associated dockage, insurance, etc. Thus, this final rule does not temporarily suspend the DAS Transfer Program, as requested.

Comment 60: TNC and PERC supported the indefinite specification of PSC and the freeze on catch history under Amendment 16. However, the NSC and three associated commercial fishermen opposed such indefinite specification of PSC, stating that PSCs should only be used for sector allocations in Amendment 16 and that alternative allocations should be developed if the fishery transitions to an IFQ regime through a future action.

Response: Although Amendment 16 specified conditions by which PSCs were calculated for sectors, such provisions do not limit the Council's ability to revise such measures in the future, or develop alternative allocation measures to support an IFQ regime through a subsequent action.

Comment 61: EDF, PEW, CLF, NAMA, and the CCCHFA indicated that additional observer coverage is necessary to effectively implement sector provisions and increase the accuracy of discard estimates in the fishery. PEW and CLF suggested that at-sea monitoring coverage should be increased to 100 percent, even if that means reducing dockside monitoring coverage. NAMA suggested that such increased coverage should be applied to at least FYs 2010 and 2011 to establish a baseline of sector operations. EDF recommended that if at-sea monitoring cannot be increased to 100 percent without delaying Amendment 16, NMFS should implement more restrictive enforcement measures that require individual vessels to pay for 100 percent observer coverage for the rest of the FY if reported discards are significantly higher or lower compared to observed trips, with positive incentives for sectors that "outperform the fleet average" for reporting quality. Two commercial fishermen, PEW, CLF,

and CCCHFA also recommended that NMFS implement 100-percent dockside monitoring coverage. Oceana further claimed that Amendment 16 does not specify the precise level of observer coverage in the FMP, as alleged in a lawsuit brought against NMFS based on the approval of Amendment 13 to the FMP.

Response: When the Council adopted Amendment 16, the Council neither selected the option to require 100-percent observer coverage, nor required sectors or the common pool to be subject to an at-sea monitoring program in FY 2010. However, NMFS agrees with the basic concept advocated by the commenters that higher levels of observer coverage are more effective at collecting the data necessary to monitor groundfish landings and discards under Amendment 16 and reducing the potential of an observer effect that could potentially compromise data collected with less than 100-percent coverage. As stated earlier in the preamble of this final rule, NMFS has funding to provide approximately 38-percent at-sea monitoring coverage for sector vessels, and about 30-percent at-sea monitoring coverage for common pool vessels, in addition to fully funding 50-percent dockside monitoring coverage for FY 2010. Such coverage levels should provide sufficient information to more than meet the minimum requirements of the SBRM, while providing the additional coverage suggested by commenters to monitor sector operations under Amendment 16. Distribution of such funds was intended to accomplish the dual goals of monitoring both at-sea catch and dockside landings to ensure that discards are accurately estimated and landings data are validated. Shifting resources to emphasize one over the other would not be consistent with the objectives of Amendment 16. Additional coverage would provide more data on groundfish catch, but even if available funds were shifted to emphasize at-sea monitoring over dockside monitoring, there may not be sufficient funding to provide 100-percent observer coverage across the entire fishery. Further, there is no guarantee that such funding will be available for future years. Requiring 100-percent coverage would, therefore, cause the fishing industry to bear such costs, absent additional funding for NMFS to pay for such coverage. Individual sectors may establish at-sea monitoring programs through their yearly operations plans that provide for additional observer coverage beyond that provided by NMFS. However, no sector has proposed such additional coverage for FY 2010.

Although EDF recommended implementing additional enforcement measures that would increase at-sea monitoring coverage based upon the accuracy of a sector's discard estimates compared to the fleet average, there were insufficient details provided to determine how to implement such a mechanism. Moreover, there is no enforcement authority that would allow the kind of real-time increase of observer coverage suggested by EDF. Further, it is unclear from the description whether it would even be possible for a sector to avoid triggering 100-percent at-sea monitoring coverage, as additional coverage would be required if the sector's reports were either statistically higher or lower than the fleet average. This approach could undermine incentives to accurately report discards and would, instead, create incentives to report discards that reflect the industry average. Because the Council did not include such a mechanism to increase at-sea monitoring coverage in Amendment 16, NMFS does not have the latitude to implement such a provision through this final rule. Finally, the Court's findings in the Amendment 13 lawsuit required that FMPs establish SBRM's, but did not mandate specified levels of observer coverage. Because Amendment 16 is in compliance with the omnibus amendment that implemented SBRMs for all FMPs managed in the NE in January 2008, Amendment 16 is not at odds with the Court's findings in the lawsuit referred to by the commenters.

Comment 62: Two commercial fishermen, PEW, CLF, and CCCHFA recommended that NMFS utilize electronic monitoring to reduce costs, including deploying electronic monitoring in other fisheries to record NE multispecies bycatch. The APO commented that the standards for approving electronic monitoring technology are not clear and that the public should be involved with any decision to approve such technology.

Response: NMFS has not yet determined whether electronic monitoring technology is sufficiently developed to be applied in the NE multispecies fishery. Criteria to evaluate such technology are currently being refined by NMFS based upon existing research and pilot programs. Any electronic monitoring technology to be applied in the NE multispecies fishery will be subject to rulemaking consistent with the Administrative Procedure Act.

Comment 63: Two individuals, the Public Employees for Environmental Responsibility (PEER), and the APO opposed Amendment 16 measures that would change eligibility standards for at-sea monitors to require a minimum of a high-school education, or equivalent, with no science background specified. They claim that lowering the education standards undercuts the observer profession and would be contrary to regional, national, and international policy and best practices. Commenters noted that there have been problems with non-degreed observers in other fishery management programs, including both professional and data problems, which caused such programs to increase their observer program eligibility and training standards significantly. They also suggest that at-sea monitors would receive less training and be paid less than fisheries observers who are required to have an advanced science and mathematics education.

Response: The educational requirement for a high school diploma rather than a college degree is a minimum eligibility requirement and does not require vendors to hire only those candidates with the minimum qualifications. Although there may have been problems with non-degree observers in other programs, NMFS intends to provide thorough and rigorous training and oversight of at-sea monitors to avoid similar problems in the NE multispecies fishery. While the training program for at-sea monitors is not as long as the training program for observers (10 days versus 16 days), the amount of data collected by at-sea monitors will also be concomitantly less than the data required to be collected by observers, due to the different roles that at-sea monitors will undertake compared to observers. The primary role of at-sea monitors is to verify area fished, catch, and discards by species, by gear type. NMFS has taken into account the data collection needs for sector management in determining the training and educational requirements for at-sea monitors. For example, unlike observers, at-sea monitors will not be required to collect biological samples, will not collect as much gear information, and will not be responsible for conducting supplemental research projects that are sometimes required of observers. At-sea monitors are intended to complement, not replace, the work performed by observers, and at-sea monitors are not expected to compromise the utility of observers or undercut the profession in any way. Therefore, NMFS concludes that the at-sea monitoring program, including standards for at-sea monitors, can be implemented in a manner consistent with regional, national, and other

policies and best practices. It is unknown whether at-sea monitors will be compensated at the same level as fisheries observers at this time.

Comment 64: One individual, PEER, APO, and Alaska Observers argued that the Amendment 16 at-sea monitoring standards would result in lower data quality and integrity. Oceana stated that Amendment 16 must include a full discussion of the effects of performance standards on uncertainty in catch estimates and overall management of the fishery. Although daily costs of at-sea monitors might be less than for fisheries observers, Alaska Observers and PEER contend that overall costs would likely increase due to complications in data oversight and accountability measures, and with the overall loss of data integrity. Six fishing industry representatives, including AFM and the NSC, supported the at-sea monitoring standards, stating that it is necessary to reduce the financial burden of such monitoring requirements as much as possible.

Response: NMFS disagrees that at-sea monitors will collect lower quality data, or data of less integrity. At-sea monitors will be required to pass rigorous training based upon the training regime developed and employed for observers. Therefore, it is expected that the data quality associated with at-sea monitors would be comparable to that associated with observers. Accordingly, NMFS does not believe that there will be any effects of the performance standards on the uncertainty in catch estimates and overall management of the fishery. At-sea monitors are meant to increase at-sea observations of fishing behavior to increase data collected in a more efficient and cost-effective manner, given the often limited resources to support a full observer program. Specifically, because at-sea monitors would not be required to collect and deliver biological samples, the costs and complexity of the logistical operations of the at-sea monitoring program are reduced compared to the existing observer program. Although NMFS cannot confirm whether at-sea monitors will be NMFS does not anticipate overall costs for implementing at-sea monitors to be higher than the cost for observers, and at-sea data collection and processing will be subject to the same standards as observer data. Because such standards are not expected to compromise data quality, but may lower the costs associated with at-sea monitoring provisions required by this action, this final rule implements the at-sea monitoring standards as proposed in Amendment 16.

Comment 65: PEER, one individual, and APO suggested that the Amendment 16 at-sea monitoring provisions would result in less public access to observer data. Although none of the commenters explained how they thought Amendment 16 would impact public access to fisheries monitoring data, it was suggested that sector management in general may limit the availability of such data for fisheries monitoring and management purposes. They also suggested that NMFS's authority and management would be undercut by a host of waivers and exemptions, and the fishing industry would gain much of the authority over fisheries monitoring.

Response: At-sea monitoring data will be subject to the same confidentiality provisions as observer program data, in compliance with the Magnuson-Stevens Act. NMFS will not apply a different standard to data collected by at-sea monitors versus observers. All data submitted to NMFS as part of the sector reporting requirements implemented by this action will be made available to fisheries managers and the public, as appropriate, for the purpose of monitoring and managing the NE multispecies fishery. Although the intent of sector management is to provide individual sectors with the responsibility of monitoring and managing sector operations, the ultimate responsibility and authority for monitoring catch and associated fishing mortality resides with the Secretary and NMFS. Therefore, NMFS does not agree that Amendment 16 measures implemented by this final rule would limit public access to monitoring data or compromise NMFS's ability to effectively monitor and manage the NE multispecies fishery.

Comment 66: PEER claimed that at-sea monitors would collect significantly fewer protected species data than traditional observers because of the time necessary for monitors to complete catch data requirements, thereby compromising NMFS's ability to meet statutory requirements under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), noting that the at-sea monitoring "Marine Mammal, Sea Turtle, and Sea Bird Incidental Take Log" will have 60 percent fewer data fields.

Response: At-sea monitors will still be required to collect data on marine mammal, sea turtle, and sea bird interactions. Incidental takes (i.e., interactions of marine mammals, sea turtles, and sea birds with fishing gear) will still be documented and described in detail. The primary difference between at-sea monitors and observers is that at-sea monitors will not collect biological specimens. Because at-sea monitor coverage will be in addition to the current levels of observer coverage, at-sea monitors represent additional on-the-water observations of interactions with marine mammals and endangered species. Thus, at-sea monitors will increase, not decrease, the data available to estimate takes of such species in the NE multispecies fishery. This will enhance, not compromise, NMFS's ability to meet statutory requirements under the MMPA and ESA, and to estimate bycatch. The fields that were eliminated in the incidental take log are the result of improved format of data collection, as much of the information collected on the current forms will be collected and described in comments on a newly designed worksheet.

Comment 67: PEER suggested that, if the sector at-sea monitoring program proposed in Amendment 16 remains unchanged, additional agency management and training staff will be required, noting that two programs will be in operation simultaneously and thus have a different process for training, inseason management, contract management, administrative oversight, data management and data modeling.

Response: The two programs will operate simultaneously and are integrated within the same group (the NEFSC Fisheries Sampling Branch). The training for at-sea monitors and observers is the same, where their roles overlap. For example, the vessel safety training, conflict resolution, species identification, and catch estimation is the same. Training of at-sea monitors will not include training for observer duties that do not apply to at-sea monitors, such as how to extract fish otoliths, vertebrae, and scales, and how to conduct a full necropsy of dead marine mammals. The inseason management, contract management, and administrative oversight of the at-sea monitoring program are not significantly different under the model being proposed for 2010 and 2011. Data management is similar, with the exception that the data collected by at-sea monitors will be submitted electronically, for the most part. Similar audits and data transfer methods are being designed for the at-sea monitoring data, in a robust relational Oracle database overseen by the NEFSC. As the integrity of the data collected are the same and of equal quality, the data modeling (use of data in fisheries management) does not have a different process. The data can be pooled and combined, but identifiers are included to be able to parse them out for quality assessment comparisons.

Comment 68: One individual noted that currently the Department of Labor (DOL) has job classifications for Fishery Observer 1, 2, or 3, and asks if the DOL have a job classification for "at-sea monitors," if the duties of an at-sea monitor are sufficiently different from those of a Fisheries Observer as to warrant a separate job classification, and whether NMFS will realize any cost-savings from hiring at-sea monitors with only high school diplomas.

Response: The DOL does not have a separate job classification for at-sea monitors. Since the duties between at-sea monitors and observers are similar, it is likely that at-sea monitors will be classified and compensated at the same rate as Fishery Observer 1. NMFS may not realize any cost-savings in terms of salaries for at-sea monitors, but other overhead costs, such as training, will be reduced.

Comment 69: One individual highlighted that there are several catch share programs currently in place, including the North Pacific and the Pacific groundfish trawl individual quota programs, that require college degreed observers for at-sea data collection. He noted that implementing such a significant change in policy with regard to educational requirements in the Northeast will have repercussions throughout the fishing industry, observer provider industry, and observer programs, particularly as fisheries begin to transition to catch share programs and the need for additional data collection and monitoring increases. The commenter asked how NMFS plans to address this disparity in policy implementation.

Response: NMFS is aware of concerns regarding hiring at-sea monitors with only a high school diploma, and presented such concerns to the Council during the development of Amendment 16. However, the Council elected to specify lower educational standards for at-sea monitors than used in other programs for the reasons listed in Amendment 16. Despite the fact that educational standards for at-sea monitors differs from similar requirements in other programs, at-sea monitors are separate and distinct from fishery observers and do not necessarily have to be held to the same standards as fishery observers. Because the Amendment 16 at-sea monitor standards are consistent with applicable law, they are implemented by this final rule. The Council and NMFS are free to make changes to the at-sea monitoring program and its eligibility requirements if the Amendment 16 educational standards negatively affect the data quality of at-sea monitors. Each FMP must be evaluated on its own needs, concerns, stances, and merits. Therefore, NMFS does not agree that the standards in Amendment 16 and implemented by this final rule will necessarily affect monitoring programs in other FMPs.

Comment 70: One individual stated that current existing observer programs have significant requirements that prohibit observers from having a financial interest in the resources they are observing. The commenter stated that Amendment 16 contains ambiguous language stating that an at-sea monitor must have "independence" from the fishery in which he/she is collecting information, but does not provide sufficient details to reasonably prohibit conflicts of interest and or withstand legal challenge.

Response: As part of the approval process to become an at-sea and/or dockside monitor provider, providers must sign and submit a document to NMFS that states that they: (1) Do not have a direct or indirect interest in a fishery, managed under Federal regulations, including, but not limited to vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions; (2) will assign at-sea and dockside/roving monitors without regard to any preference by representatives of vessels other than when a monitor will be deployed; and (3) will not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of at-sea and/or dockside/roving providers. In addition, individual at-sea and dockside monitor approved/certified by NMFS will be required to sign a document stating that they do not have a direct or indirect interest in a fishery, managed under Federal regulations, including, but not limited to vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions.

Comment 71: One individual stated that the lack of a contract between the Federal government and the service provider severely limits oversight by Federal managers, creates an undue burden on the Federal agency to make programmatic changes to the monitoring program, does not prevent service providers from non-payment of observers and monitors, and does not provide a timely management mechanism to ensure consistently good performance by service providers. This individual recommended that NMFS should require a no-cost performance-based contract between NMFS and the service provider in order for NMFS to have sufficient program management oversight. If a no-cost contract is not implemented, the commenter believed NMFS should require service providers to be bonded to prevent non-payment of observers and at-sea monitors.

Response: Although there does not have to be a direct contract between NMFS and the service providers, there are detailed requirements to be met by the provider companies and the individual monitors. NMFS reviews the qualifications of the providers through an annual approval process. The individual monitors must meet requirements specified in Amendment 16, and pass the training in order to become certified. NMFS has the authority to disapprove or decertify if any requirements are not being met. NMFS has received sufficient appropriations to fund at-sea monitoring, for FY 2010 at least, and is in the process of issuing a Request for Proposals, which will be a performance-based contract for at-sea monitoring. NMFS will still maintain close oversight of the provider companies and monitors to ensure that performance and reporting expectations are being met, safety is not being compromised, and monitors are being treated fairly. NMFS is continuing to evaluate various service delivery models, such as the no-cost contract. There are provisions to transition to industry funding of at-sea monitors in FY 2012, and at that time NMFS and the Council may consider alternative service delivery models. NMFS is currently investigating mechanisms to protect service providers and individual monitors from failure of either a vessel or service provider to pay for particular services, including permit sanctions for clear non-payment cases. However, many of these issues are private business matters that should be resolved by the parties involved, rather than requiring NMFS intervention. In sum, NMFS has determined that the system that will be in place addresses the concerns raised.

Comment 72: One individual recommended that NMFS should provide additional information addressing each of the key elements, including training, briefing and debriefing, at-sea training, bonus initiatives, fraud detection, at-sea monitor manuals, additional training requirements that are required in the NMFS observer eligibility policy, and identifying how each element will be implemented for observers and for at-sea monitors.

Response: The at-sea and dockside monitoring training is being designed and conducted by the Northeast Fisheries Observer Program Observer (NEFOP) Training Center. The training for both certifications is 10 days and includes a full background security check, fish identification, tour of fish house, survival training at sea, vessel safety, safety at the docks and at seafood dealers, compliance reporting, marine mammal identification, sea turtle identification and resuscitation, sea bird identification, catch estimation, fish length measurements, basic gear information on bottom otter trawl, anchored sink gillnet, and bottom longline, hygiene, conflict resolution, data quality and probation policies, gear maintenance, and introduction to the NEFOP staff. The training includes a pre-study assignment, quizzes, required homework assignments, and exams that are required to be passed with a score of 85 percent or above. Attendance at all day's training is mandatory, and overall attitude is assessed by the trainers and service providers. The training will uphold the requirements noted in the NMFS observer eligibility policy, such as requiring a licensed physician note stating that the candidate is physically capable of serving as an at-sea monitor, candidates must be able to clearly and concisely communicate verbally and in writing in English, and candidates must be a U.S. citizen, or a non-citizen who has a green card, TN authorization, H1 visa, or valid work visa, and a social security card. At-sea monitors will be assigned to a NMFS editor with the NEFOP, and regular briefings and debriefings will be performed in person, by email, and by phone. Trip data will undergo a thorough check for patterns that would indicate fraud. Other data sources will be used as comparisons. Fishermen Comment Cards will be distributed, and captain interviews will be conducted. A full at-sea monitoring manual will be available to the public on the NEFOP's website once it has been fully developed.

Comment 73: Three commercial fishermen, the AFM, and the Sustainable Harvest Sector recommend that dockside monitors should not be required for trips in which either an at-sea monitor or fishery observer is deployed. They suggested that such a practice is redundant and a waste of resources.

Response: NMFS disagrees. The roles for dockside monitors and at-sea monitors are different; dockside monitors are intended to verify the landings of a vessel and certify that landings weights on the dealer report are accurate, while at-sea monitors are responsible for verifying area fished, catch, and discards by species and gear type. Furthermore, the responsibilities of a fishery observer differ from those of an at-sea monitor, in that observers are also required to collect biological samples and more comprehensive data on the interactions with protected species and marine mammals. Moreover, because both at-sea monitors and observers do not have the capacity to operate 24 hr per day, and are often required to sub-sample portions of the catch, data from at-sea monitors or observers do not represent a complete accounting of every pound of fish that is retained by a vessel, unlike dealer reports, and cannot be used to validate dealer reports. Finally, the Council did not differentiate in Amendment 16 between trips monitored by an at-sea monitor or observer for the purposes of defining dockside monitoring coverage levels. Therefore, because the purposes of dockside monitors and at-sea monitors and observers are different, the associated data for each entity are not directly comparable, and because the Council did not consider the exemption requested by the commenters, NMFS is not implementing such an exemption through this final rule.

Comment 74: One commercial fisherman supported the ACE carry-over provisions.

Response: This final rule implements the ACE carry-over provisions, as proposed.

Comment 75: Five commercial fishermen, the AFM, the NSC, and the Sustainable Harvest Sector wanted clarification that an ACE overage is not a violation unless such an overage is not balanced at the end of the FY through acquisition of additional ACE through ACE transfer provisions. To treat an overage as a violation without considering ACE transfers, they believed, is inconsistent with Amendment 16.

Response: In Amendment 16, an overage for the purposes of triggering a violation is distinct from an overage that triggers a sector's AMs (overage deduction). Section 4.2.3.4 of Amendment 16 explicitly states that sectors are required to ensure that ACEs are not exceeded during a FY and "should project when its ACE will be exceeded and should cease fishing operations prior to exceeding it." If a sector's ACE is exceeded, Amendment 16 prohibits any sector vessel from fishing in a stock area until it acquires additional ACE. Thus, if a sector exceeds its ACE, but fishing vessels in the sector continue to fish in a particular stock area, NMFS considers such fishing to be a violation. For the purposes of applying sector AMs, a sector is not considered to have exceeded its ACE, and is not in violation, unless it cannot rectify such an overage by acquiring ACE from another sector up to 2 weeks following the end of the FY. NMFS believes that the proposed regulations accurately reflected these restrictions, and no revisions to the applicable regulatory text are made in this final rule.

Comment 76: CLF and CCCHFA expressed general support for the universal sector exemptions proposed in Amendment 16.

Response: This final rule implements the proposed universal sector exemptions.

Comment 77: One individual strongly opposed allowing sectors into spawning areas in Ipswich Bay, MA while spawning is occurring, suggesting doing so under Amendment 16 could have disastrous consequences on one of the few large and healthy cod spawning components, including preventing successful spawning and rapidly depleting this unique spawning component. This individual highlights research indicating that fish spawning in Ipswich Bay show site fidelity, are genetically distinct, and contribute to recruitment from Massachusetts to Maine. This individual recommended revising Sector GOM Rolling Closure Area IV to protect spawning areas and prohibiting recreational vessels from fishing in such areas during spawning periods.

Response: Much of the research highlighted by this individual was not available prior to the decision by the Council to allow sectors to access portions of the existing GOM Rolling Closure Areas and, therefore, was not considered when developing this action. This research could be used by the Council to modify such access in a future action.

Comment 78: The NSC, three associated commercial fishermen, and the AFM supported sector exemptions to use 6-inch (15.24-cm) mesh codends when fishing with the Ruhle trawl or haddock separator trawl on GB. However, five commercial fishermen, the NSC, the AFM, and the Sustainable Harvest Sector also supported similar exemptions in the GOM to facilitate the harvest of GOM haddock.

Response: This final rule implements the universal sector exemption to use 6-inch (15.24-cm) mesh codends when fishing with the Ruhle trawl or haddock separator trawl on GB. When the Groundfish Oversight Committee (Committee) developed this exemption for consideration by the Council at its June 2009 meeting, the Committee

explicitly decided not to provide the flexibility for sectors to use 6-inch (15.24-cm) mesh codends in the GOM due to concerns over the potential for this measure to increase interactions with undersized fish. Because there was no justification or analysis provided in Amendment 16 for such an exemption, NMFS cannot modify the universal sector exemptions adopted by the Council in Amendment 16 to allow Sector vessels to use 6-inch (15.24-cm) mesh codends in the GOM through this final rule.

Comment 79: One commercial fisherman, the AFM, and the Sustainable Harvest Sector recommended that sector vessels fishing on a monkfish DAS in the Southern Fishery Management Area, any sector trip west of 72°30′ W. long., any sector trip using exclusively 10-inch (25.4-cm) or greater mesh gillnets or codends, and any sector trip by vessels issued a Category F monkfish permit, should be exempt from the sector monitoring requirements, but still be required to comply with all other sector requirements. They argued that such trips catch very small amounts of NE multispecies and should not be subject to provisions that are only necessary to monitor the catch of NE multispecies.

Response: Section 4.2.3.4 of Amendment 16 clearly indicates that the ACE allocated to sectors applies to all catches of those stocks by sector vessels, regardless whether such catch was harvested during a directed NE multispecies trip, or on other trips. The proposed regulations to implement Amendment 16 indicate that applicable sector requirements would apply to all sector trips, and defined a sector trip as any trip taken by a sector vessel in which the vessel declared its intent to fish in the NE multispecies fishery. Therefore, a trip by a sector vessel in another fishery, such as the summer flounder fishery, that does not require the concurrent use of a NE multispecies DAS would not be subject to the sector requirements. However, a trip by a sector vessel that is also issued a monkfish permit would be considered a sector trip, as defined in this action, because the current monkfish regulations would require the concurrent use of a NE multispecies DAS. Because the Amendment 16 monitoring provisions are designed to ensure that all sector catch is properly accounted for, it would be inconsistent with Amendment 16 to exempt trips that meet the definition of a sector trip from such reporting requirements, as it would not provide the assurance that NE multispecies catch on such trips would be properly accounted for. In addition, because the requested exemptions represent substantial revisions from the proposed measures, it is not appropriate to implement such changes outside of the Council process. Thus, this final rule does not provide the requested exemptions from sector monitoring requirements, as requested.

Comment 80: The PERC, CCCHFA, and TNC supported ACE trading provisions proposed in Amendment 16. TNC suggested that NMFS should develop a clearinghouse for ACE trading, while PERC and the CCCHFA recommended that requiring ACE to be traded within bins of vessel size, gear, or other criteria would help protect the small-boat fleet. The AFM was concerned that, due to the number of sectors affiliated with the NSC, such sectors would be unwilling to transfer ACE with other sectors. AFM argued that NMFS must take action to ensure that other sectors do not place limitations on ACE trades with other sectors. The NSC and associated members emphasized that ACE trades must be approved immediately upon receipt by the Regional Administrator.

Response: NMFS agrees that ACE trading is critical to the success of sector management. Section 4.2.3.7 of Amendment 16 describes ACE transfers as a private business arrangement between sectors that is not subject to any restrictions on the nature of the transactions between sectors. However, there is no reason that a sector could not stipulate such conditions as part of its negotiations to trade ACE with another sector. Further, the Council could implement such restrictions in a future action if data suggest that the small-boat fleet is being adversely affected by unrestricted ACE trading under Amendment 16. Because both the Council and NMFS consider ACE transfers to be a private business arrangement, NMFS is not inclined to dictate the conditions under which individual sectors may trade ACE with one another, including mandating that individual sectors must trade with one another. However, if problems arise due to obstacles in trading ACE that affect conservation and management objectives of the FMP, NMFS or the Council could make changes to measures governing such trading. In addition, these types of potential problems are going to be addressed as stated in response to Comment 59 (i.e., the response to the sector allocation cap removal). NMFS is considering posting ACE balances online to provide the data necessary for various sector managers to negotiate ACE trades. As outlined in Amendment 16, an ACE transfer is not authorized until approved by NMFS. NMFS intends to review and process ACE transfer requests as quickly as possible. Consistent with Amendment 16, NMFS will approve/disapprove ACE transfer requests based upon whether the sectors requesting the transfer of ACE are complying with sector reporting and administrative requirements implemented by this action.

Comment 81: Despite acknowledging the likely substantial revisions to current record-keeping processes, TNC urged the Council and NMFS to consider ways to recognize private arrangements to distribute fishing history among individual sectors as part of approved ACE transfer requests, as specified in the ACE trading agreements.

Response: The Council froze catch history in Amendment 16, but could accommodate requests similar to those of TNC through a future action. NMFS agrees that recognizing alternative distributions in fishing history as a result of ACE transfers would require substantial revisions to existing record-keeping processes and databases that would significantly increase the complexity of catch monitoring processes currently being developed for approved Amendment 16 measures.

Comment 82: TNC and the CCCHFA expressed general support for Amendment 16 provisions that limit which measures may result in joint liability for sector vessels.

Response: This final rule implements the approved Amendment 16 joint/several liability provisions.

Comment 83: PERC and TNC expressed general support for allowing permits currently in CPH to participate in sectors. The Northeast Coastal Communities Sector noted that because sector catch will be regulated by hard TACs, the sector eligibility requirements should be revised to allow vessels issued an open access NE multispecies permit to participate in sectors and comply with sector provisions.

Response: This final rule allows permits currently in CPH to participate in sectors as approved in Amendment 16, but does not allow vessels issued an open access NE multispecies permit to participate in sectors. As observed in the Northeast Coastal Communities Sector's comment, at its June 2009 meeting, the Council considered requests by industry to revise the sector eligibility restrictions to allow open access permits to participate in sectors, but did not ultimately make such revisions, arguing that there were many opportunities to incorporate such a revision earlier in the development of Amendment 16 and that it would not be

appropriate to add such a provision at the last minute due to the potential ramifications on other measures, including PSCs and VMS requirements.

Comment 84: UNFA opposed the Amendment 16 provision that would require that sectors be composed of at least 3 individuals, none of whom have an ownership interest in one another, citing an example that 10 separate corporations owned by the same people would be prohibited from participating as a sector even though each corporation is a separate legal entity.

Response: Amendment 16 included minimum requirements for sector formation for a number of reasons, including to minimize the concern that one entity (or group of related entities) could obtain an excessive share of the available resource, address concerns that sectors would be a means to circumvent the ITQ referendum requirements of the Magnuson-Stevens Act, ensure accountability among sector members, and reduce the administrative burden of implementing a large number of very small sectors. The example highlighted by UNFA would not comply with the measures approved under Amendment 16, as they would undermine the objectives of this provision.

Comment 85: The CCCHFA supported, while NSC and three associated commercial vessels opposed, the proposed measure that prohibits sectors from carrying over unused ACE of GB yellowtail flounder, Eastern GB cod, and Eastern GB haddock. The NSC and associated commercial fishermen recommended that sectors should be allowed to carry over unused ACE for such stocks as long as the U.S. portion of the TACs specified pursuant to the Understanding are not exceeded, particularly if U.S. vessels are unable to fully harvest available TAC due to complying with more conservative rebuilding requirements than required by the Magnuson-Stevens Act.

Response: When the Council deemed the proposed regulations to be consistent with Amendment 16, they recognized that, although this provision was not specifically described in Amendment 16 itself, they could not identify any provision in Amendment 16 that would allow carry-over for these stocks without risking that the U.S./Canada Management Area TACs would be exceeded. Although projections could be used to determine if the U.S. TACs for these species would be exceeded during the following year to allow carry over on a year-to-year basis, it would not be possible to implement such a measure, yet ensure that the U.S./Canada TACs for these stocks would not be exceeded. Further, if the annual TACs are overestimated, as has occurred in the past several years, overfishing could occur if both the entire U.S. TACs for these species and any carry-over ACE are caught in the following FY. Accordingly, NMFS, under the authority of section 305(d) of the Magnuson-Stevens Act, has retained this measure in the final rule.

VMS Requirement

Comment 86: CLF expressed general support for the proposed VMS provisions that would require all vessels participating in sectors or fishing under a DAS to use VMS.

Response: This final rule implements the VMS provisions as proposed.

Transfer of ACE by NOAA-sponsored Permit Banks

Comment 87: CLF supported the development of permit banks as proposed by NMFS in the proposed rule as an important management tool that could support community-based fisheries and allow new entrants into the fishery. However, they commented that such provisions were neither analyzed by the Council, nor considered in the Amendment 16 FEIS, and that the details of such NOAA-sponsored permit banks are unknown. Based on this, CLF recommended that this provision should not be implemented in this action and that the Council should consider development of such programs in a future action. Similar comments were submitted by NSC and associated individual members. One commercial fisherman and NHCFA suggested that other institutions that formed permit banks should be recognized and allowed to operate in the same manner as NOAA-sponsored permit banks, while TNC requested clarification on what types of entities would qualify as a state-operated permit bank, what constitutes a NOAA-sponsored permit bank, and from what sector management provisions would such permit banks be exempt.

Response: NMFS acknowledges that this measure was not considered by the Council in Amendment 16. The establishment of the NOAA-sponsored permit bank occurred independent of the Council process through a $1 million Congressional appropriation to provide financial assistance to the New England fisheries and to "support a pilot permit banking program through which fishing opportunity will be preserved for small and remote communities in Maine." Because the initial $1 million appropriation was specific to the establishment of a pilot permit bank program, NMFS anticipated that, should the permit bank program with the State of Maine be successful, Congress may provide additional appropriations to establish similar permit bank programs in other states. Thus, NMFS intended this provision of the regulations to serve more broadly than simply the current permit bank program with the State of Maine so that any future permit bank programs established in partnership with other States may operate effectively.

Upon consideration of public comment on the proposed rule, NMFS recognizes that the regulations specific to NOAA-sponsored permit banks have broader implications on the definition of a sector, as developed by the Council in Amendment 16, and on the ability of existing and future permit banks to operate under the sector provisions approved in Amendment 16. Therefore, it may be appropriate for the Council to consider if and how the measures originally proposed to apply only to the NOAA-sponsored permit banks should be revised to accommodate participation by other institutions or permit banks that are not sponsored by NOAA and operated by a state. To foster further discussion on permit banks and how they are affected by the provisions approved under Amendment 16 and implemented by this action, NMFS has removed proposed measures specific to NOAA-sponsored permit banks through this action and will recommend that the Council consider addressing public comments received on this provision through a subsequent Council action.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule, including changes as a result of public comment and the disapproval of the GOM Haddock Sink Gillnet Pilot Program in Amendment 16. Some of these changes are administrative in nature, clarify the new or existing management measures, or correct inadvertent omissions in the proposed rule. These changes are listed below in the order that they appear in the regulations.

The description of the reporting and recordkeeping requirements of this action has been revised to include burdens associated with forwarding trip start/end hails to NMFS and notifications to vessels, sectors, and NMFS of a dockside or at-sea monitor emergency. These burdens were included in the PRA package reviewed by the OMB as part of this action.

In § 648.10, paragraph (k)(3)(iv), the SNE/MA Stock Area 4, has been reserved and not revised in this final rule, as proposed, so that revisions to the coordinates for this area can be more

efficiently implemented in the final rule for Framework Adjustment 44.

In § 648.10(k)(2), the data elements required to be reported by vessels fishing in multiple broad stock areas on the same trip was clarified to reference reporting total catch of all species for each broad stock area fished. This is not expected to affect the public reporting burden associated with the information collection for this action.

In § 648.10(k)(3)(i), point G9 of the GOM Stock Area I has been revised to align the boundary of the GOM Stock Area 1 near the Cape Cod, MA, coastline at 70°00′ W. long. with Northeast Region (NER) statistical areas 514 and 521. The area was also modified to terminate at the U.S./Canada maritime boundary.

In § 648.10(k)(3)(ii), point G9 of the Inshore GB Stock Area 2 has been revised to align the boundary of the Inshore GB Stock Area 2 near the Cape Cod, MA, coastline at 70°00′ W. long. with NER statistical areas 514 and 521.

In § 648.10(k)(3)(iii), the Offshore GB Stock Area 3 has been revised to terminate the area at the U.S./Canada maritime boundary.

In § 648.14, paragraph (k)(12)(ix) was removed due to the disapproval of the GOM Haddock Sink Gillnet Pilot Program, and paragraphs (k)(13)(ii)(A) and (B) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from measures approved under Framework Adjustment 44 may be more efficiently implemented in the final rule for that action.

In § 648.60, the introductory text for paragraph (a)(5)(ii) and paragraph (a)(5)(ii)(C)(*2*) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from measures approved under Framework Adjustment 44 may be more efficiently implemented in the final rule for that action.

In § 648.81(f)(2)(vi), paragraphs (A) and (D) were removed, and paragraphs (B), (C), and (D) were reclassified as paragraphs (A), (B), and (C), respectively, to delete inaccurate references to Sector Rolling Closure Areas I and V and accurately reflect the Council's intent to exempt sector vessels from the existing GOM Rolling Closure Areas I and V in March and October/November.

In § 648.81(f)(2)(vi)(B), the description for the Sector Rolling Closure Area III has been revised to intersect with the Maine coastline, not New Hampshire, as previously stated.

In § 648.81(f)(2)(vi)(C), the description for the Sector Rolling Closure Area IV has been revised to intersect with the New Hampshire coastline, not Massachusetts, as previously stated.

In § 648.81(n)(2), a duplicate point in the description of the SNE Multispecies Restricted Gear Area, MRAG1, has been removed because it was listed twice.

In § 648.82, the introductory text to paragraph (b)(6) and paragraphs (e)(1)(i) and (n)(1)(ii) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from measures approved under Framework Adjustment 44 may be more efficiently implemented in the final rule for that action. Paragraphs (e)(1)(i) and (n)(1)(ii) are instead reserved by this final rule.

In § 648.82(n)(1)(i)(C), point G9 of the Inshore GB Differential DAS Area has been revised to align the boundary of the Inshore GB Differential DAS Area near the Cape Cod, MA, coastline at 70°00′ W. long. with NER statistical areas 514 and 521.

In § 648.82(n)(1)(i)(D), the Offshore GB Differential DAS Area was revised to terminate the area at the U.S./Canada maritime boundary.

In § 648.82(n)(2)(ii)(A), point GB3 of the GB Cod Trimester TAC Area has been revised to align the boundary of the GB Cod Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20′ N. lat. with NER statistical areas 521 and 526. The area was also modified to terminate at the U.S./Canada maritime boundary.

In § 648.82(n)(2)(ii)(C), point GB3 of the GB Haddock Trimester TAC Area has been revised to align the boundary of the GB Haddock Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20′ N. lat. with NER statistical areas 521 and 526. The area was also modified to terminate at the U.S./Canada maritime boundary.

In § 648.82(n)(2)(ii)(E), point GB3 of the GB Yellowtail Flounder Trimester TAC Area has been revised to terminate the area at 40°30′ N. lat. and the U.S./Canada maritime boundary.

In § 648.82(n)(2)(ii)(H), point GB8 of the American Plaice Trimester TAC Area has been removed because it was unnecessary and directly in line with two other points for area, with points following renumbered to reflect the removal of point GB8.

In § 648.82(n)(2)(ii)(I), point GB8 of the Witch Flounder Trimester TAC Area has been removed because it was unnecessary and directly in line with two other points for area, with points following renumbered to reflect the removal of point GB8.

In § 648.82(n)(2)(ii)(J), point GB5 of the GB Winter Flounder Trimester TAC Area has been revised to terminate the area at 40°30′ N. lat. and the U.S./Canada maritime boundary. Point GB14 has been revised to align with the boundary of statistical area 562.

In § 648.82(n)(2)(ii)(L), point 8 of the SNE/MA Winter Flounder Trimester TAC Area has been revised to ensure that the coordinates accurately reflect intersections with the shoreline of Nantucket, MA.

In § 648.82(n)(2)(ii)(M), point RF18 of the Redfish Trimester TAC Area has been revised to align the boundary of the Redfish Trimester TAC Area near the east-facing shoreline of Nantucket, MA at 41°20′ N. lat. with NER statistical areas 521 and 526.

In § 648.82(n)(2)(ii)(N), point RF18 of the White Hake Trimester TAC Area has been revised to align the boundary of the White Hake Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20′ N. lat. with NER statistical areas 521 and 526.

In § 648.82(n)(2)(ii)(O), point RF18 of the Pollock Trimester TAC Area has been revised to align the boundary of the Pollock Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20′ N. lat. with NER statistical areas 521 and 526.

In § 648.82(n)(2)(ii)(P), point ATWLF21 of the Atlantic Wolffish Trimester TAC Area has been revised to align the boundary of the Atlantic Wolfish Trimester TAC Area near the east-facing shoreline of Nantucket, MA, at 41°20′ N. lat. with NER statistical areas 521 and 526.

In § 648.85, paragraph (b)(9) was removed due to the disapproval of the GOM Haddock Sink Gillnet Pilot Program. In addition, paragraphs (b)(6)(v)(A), (B), (D), (F) through (I), and (K) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from adjustments specified in the Framework Adjustment 44 final rule may be more efficiently implemented through the final rule for that action. Instead, paragraphs (B), (D), and (F) of this section are reserved by this final rule.

In § 648.85(a)(3)(v)(B), (b)(6)(iv)(I), and (b)(7)(vi)(D), references to statistical area fished were inserted in the reporting requirements for special management programs to ensure that NMFS can accurately attribute catch to the Eastern U.S./Canada Area, and references to ocean pout and Atlantic wolffish were removed to reduce the reporting burden associated with stocks that cannot be landed.

In § 648.85(b)(6)(v)(C), point CCGOM11 of the CC/GOM Yellowtail Flounder Stock Area of the Regular B DAS Program was added, and point CCGOM14 was revised to correct the nearshore boundary of the area as it intersects the east-facing shoreline of MA.

In § 648.85(b)(6)(v)(E), a duplicate point in the SNE/MA Yellowtail Flounder Stock Area for the Regular B DAS Program was removed, and point SNEMA9 was revised to correct the boundary of this area, as it intersects the south-facing shoreline of Cape Cod, MA.

In § 648.85(b)(6)(v)(G), points defining the Witch Flounder Stock Area of the Regular B DAS Program were revised to terminate the area at the U.S./Canada maritime boundary.

In § 648.85(b)(8)(v)(E)(1), text was inserted to allow sector vessels fishing in the Eastern U.S./Canada Haddock SAP to use gear other than the haddock separator trawl or the Ruhle trawl to maintain consistency with the preamble text of the proposed rule and measures adopted by the Council in Amendment 16.

In § 648.86, paragraphs (a)(1), (b)(1), and (m)(1) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from measures approved under Framework Adjustment 44 may be more efficiently implemented in the final rule for that action. Paragraph (m)(1) of this paragraph is instead reserved by this final rule.

In § 648.87(b)(1)(ii), the introductory text was revised to include reference to ACE transfers when defining when an ACE is exceeded, and to remove an incorrect reference to gear capable of catching NE multispecies to define a sector trip to ensure that sector vessels may continue to participate in exempted fisheries, as proposed.

In § 648.87(b)(1)(ii)(A) through (F) are not revised in this final rule, as proposed, so that revisions to these paragraphs resulting from adjustments specified in the Framework Adjustment 44 final rule may be more efficiently implemented through the final rule for that action. Instead, these paragraphs are reserved by this final rule.

In § 648.87(b)(1)(iii)(B)(*3*), the regulatory text was revised to clarify that a sector vessel shall be prohibited from fishing on a sector trip in a stock area for which the sector's ACE was exceeded during the previous fishing year by removing an incorrect reference to gear capable of catching NE multispecies to define a sector trip in the example provided in this paragraph.

In § 648.87(b)(1)(iv)(B), a definition of "permit/vessel" has been inserted to clarify the application of vessel replacement and sector commitment restrictions to permits/vessels enrolled in sectors.

In § 648.87(b)(5)(i)(A)(*1*) and (*2*), the dockside monitoring trip-start and trip-end hail report requirements have been revised to clarify the data elements that must be reported. In the trip-start hail report, "trip duration" was clarified as the date and time of arrival in port, while language was added to specify that trips less than 6 hr in duration or within 6 hr from port must include the estimated date and time of offload. In the trip-end hail report, the data elements necessary for "all dealers/facilities" were revised to state that the dock/dealer, port/harbor, and state were required for the first dealer/facility where the vessel intends to offload catch, while only the port/harbor and state for the second dealer/facility where the vessel intends to offload catch must be reported. This reduces the amount of information that must be submitted by vessels. In addition, the requirement to report the "estimated total weight of each species on board" was clarified to state that vessels must report the total weight of all regulated NE multispecies species and the total weight of all other species on board. These changes were included in the public reporting burden associated with the information collection for this action.

In § 648.89, paragraph (c)(6) is added to reflect the intent of Amendment 16 to prohibit all vessels, including recreational vessels, from possessing winter flounder from the SNE/MA winter flounder stock area.

In § 648.90(a)(2)(iii), the phrase "the calculation of PSCs" was inserted to clarify the list of measures that may be revised through a framework adjustment.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

The Regional Administrator determined that the management measures implemented by this final rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or "takings" implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Council prepared a FEIS for Amendment 16 to the FMP. The FEIS was filed with the Environmental Protection Agency on October 23, 2009. A notice of availability was published on October 30, 2009 (74 FR 56195). In partially approving the Amendment 16 on January 21, 2010, NMFS issued a ROD identifying the measures approved under this action. A copy of the ROD is available from NMFS (see **ADDRESSES**).

Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in effectiveness of this rule. This final rule is necessary to implement measures that will immediately end overfishing on all stocks, establish rebuilding programs for newly overfished stocks, implement measures to rebuild overfished stocks, and establish a process to specify ACLs and associated AMs to maintain compliance with the Magnuson-Stevens Act. In addition, this final rule includes several provisions that help mitigate the adverse economic impacts resulting from continued efforts to end overfishing and rebuild overfished stocks and increase the economic efficiency of vessel operations, including revisions to the DAS Leasing and Transfer Programs, authorization of 17 new sectors, and other measures. This rule must be in effect at the beginning of FY 2010 on May 1, 2010, to fully capture its environmental and economic benefits. In order to have this action effective at the beginning of FY 2010, it is necessary to waive the 30-day delay period for this rule.

The measures implemented by the 2009 interim action will expire on April 30, 2010. While these measures were expected to substantially reduce F for most stocks, overfishing was expected to continue for several stocks, notably GB cod, witch flounder, pollock, and northern windowpane flounder. As a result, it is imperative to implement measures to achieve $F_{rebuild}$ for all overfished stocks in the FMP by the start of FY 2010 on May 1, 2010, to end overfishing, ensure that rebuilding programs are not compromised, and increase the likelihood that overfished stocks will rebuild within established rebuilding periods. Failure to waive the 30-day delay in effectiveness would prevent such measures from being implemented on May 1, 2010, and would, therefore, allow for the continuation of overfishing on specific groundfish stocks such as GB cod, witch flounder, pollock, and northern windowpane flounder; stocks in need of substantial F reductions for the start of FY 2010. This would be contrary to not only the interest of the fishing communities, but to the public at large, as overfishing and overfished stocks decreases the ability of the public to enjoy that stock for recreational,

aesthetic, or other reasons, and reduces the availability of seafood.

In addition, delay in the implementation of this rule beyond May 1, 2010, could result in short-term adverse economic impacts to NE multispecies vessels and associated fishing communities caused by delaying the rebuilding of overfishing stocks and the benefits associated with sustainable fishery resources. Delaying implementation of this final rule would mean that vessels participating in sectors, at least 812 vessels (55% of the groundfish fleet) as of the January 22, 2010, sector rosters, would not be able to take advantage of the flexibility in vessel operations provided by exemptions to trip limits and DAS use implemented by this final rule at the start of the year. Moreover, because vessels committed to a sector may not fish in both the common pool and a sector in the same FY, vessels currently signed into a sector would be forced to cease fishing operations entirely after May 1, 2010, until the end of the full 30-day delayed effectiveness period, or forego sector membership for the entire FY, thereby losing the mitigating economic efficiencies of the restrictions relieved for sector vessels. This would reduce the economic efficiency of the fleet until such measures become effective, and cause unnecessary adverse economic impacts to affected vessels, including the majority of active vessels. As a result, delayed implementation of these measures beyond May 1, 2010, would be contrary to the public interest.

FRFA

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in Amendment 16. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, relevant analyses and comments and responses in Amendment 16, and a summary of the analyses completed to support the action. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed and this final rule and is not repeated here.

Summary of the Issues Raised by Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

Comment A: Although not specific to the IRFA, NHCFA stated that Amendment 16 underestimates the economic impacts of proposed measures, but did not provide additional detail as to what this group contends would be the economic impacts of the proposed measures. Further, Mayor Lang of New Bedford, MA stated that the economic analysis must include impacts on communities, including impacts to the tax base and infrastructure if vessels will no longer remain economically viable.

Response: As stated in the response to Comment 4 in this preamble, a full analysis, consistent with guidelines concerning the scope and content of such analyses, of the economic impacts of proposed measures was conducted for this action using the best available scientific information. The analysis notes that there are a number of sources of uncertainty associated with measures in Amendment 16 that make precise evaluation of impacts difficult. A full discussion of the impacts of changes in occupational opportunities and community infrastructure is in Section 7.6.3.4 of the FEIS.

Description of and Estimate of the Number of Small Entities to Which the Final Rule Would Apply

This final rule implements changes that affect any vessel holding a limited access NE multispecies permit, an open access handgear permit (Handgear B permit), and vessels that hold an open access charter/party permit. Based on FY 2007 data in Sections 6.2.3 and 6.2.5.5 of the FEIS, the total number of small entities that may be affected is 3,854 permit holders, including 1,530 limited access permit holders, 1,292 open access Handgear B permit holders, and 762 open access charter/party permits. Of the 1,292 vessels issued Handgear B permits, only 75 reported landing cod, suggesting that the number of such permits affected by this action may be substantially smaller than the number of vessels actually issued Handgear B permits. However, past fishing activity may not be an accurate predictor of future fishing activity, particularly because this action substantially increases cod possession limits for vessels issued Handgear B permits. During FY 2007, 128 of the 762 open access charter/party permit holders reported taking at least one for-hire trip, of which 74 reported keeping NE multispecies on one or more trips. An additional 29 limited access permit holders reported taking passengers for hire, of which 18 reported keeping NE multispecies on one or more for-hire trips. Thus, a total of 92 charter/party operators participated in the charter/party recreational NE multispecies fishery during FY 2007. As of January 22, 2010, 812 vessels elected to join a sector for FY 2010, as determined through the submission of annual sector operations plans. However, vessels may withdraw from sectors until the beginning of FY 2010 on May 1, 2010. Therefore, because participation in sectors is voluntary, the number of vessels that will actually participate in sectors during FY 2010 and future years is likely to fluctuate based upon whether joining a sector or fishing under common pool measures offers the greater economic advantage to each individual vessel.

The Small Business Administration (SBA) size standard for determining small entities for commercial fishing entities (NAICS code 114111) is $4 million in sales, while the size standard for charter/party operators (part of NAICS cod 487210) is $7 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million. Available data are not adequate to identify affiliated vessels, so each operating unit is considered a small entity for purposes of the RFA. For regulated charter/party operators, the median value of gross receipts from passengers was just over $9,000, and did not exceed $500,000 in any year during 2001 to 2007. Therefore, all regulated commercial fishing and all regulated charter/party operators are determined to be small entities under the RFA, and, accordingly, there are no differential impacts between large and small entities under this final rule.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

Reporting and Recordkeeping Requirements

This final rule contains reporting and recordkeeping requirements and associated information collections subject to the Paperwork Reduction Act (PRA) that have been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0605. Measures implemented by this final rule include several provisions

that require either new or revised collection-of-information requirements. Public reporting burden for these collections of information are estimated to average as follows:

1. Sector operations plan and associated NEPA analysis, OMB# 0648–0605, (640 hr/response);
2. Dockside/at-sea monitoring service provider application, OMB# 0648–0605, (10 hr/response);
3. Dockside/at-sea monitoring service provider response to application disapproval, OMB# 0648–0605, (10 hr/response);
4. Data entry for sector discard monitoring system, OMB# 0648–0605, (3 min/response);
5. Sector weekly catch report, OMB# 0648–0605, (4 hr/response);
6. Sector annual report, OMB# 0648–0605, (12 hr/response);
7. Notification of expulsion from a sector, OMB# 0648–0605, (30 min/response);
8. Request to transfer ACE, OMB# 0648–0605, (5 min/response);
9. VMS certification form, OMB# 0648–0605, (10 min/response);
10. VMS confirmation call, OMB# 0648–0605, (5 min/response);
11. VMS area and DAS declaration, OMB# 0648–0605, (5 min/response);
12. VMS trip-level catch reports, OMB# 0648–0605, (15 min/response);
13. Request for a LOA to participate in the GOM Haddock Gillnet Pilot Program, OMB# 0648–0605, (5 min/response);
14. Request for a LOA to fish in a NE multispecies RGA, OMB# 0648–0605, (5 min/response);
15. VMS declaration to fish in a NE multispecies RGA, OMB# 0648–0605, (5 min/response);
16. Pre-trip hail report to a dockside monitoring service provider, OMB# 0648–0605, (2 min/response);
17. Trip-end hail report to a dockside monitoring service provider, OMB# 0648–0605, (15 min/response);
18. Confirmation of dockside monitoring trip-end hail report, OMB# 0648–0605, (2 min/response);
19. Dockside/roving service provider data entry, OMB# 0648–0605, (3 min/response);
20. Dockside/roving or at-sea monitor deployment report, OMB# 0648–0605, (10 min/response);
21. Dockside/roving or at-sea monitoring service provider catch report to NMFS upon request, OMB# 0648–0605, (5 min/response);
22. Dockside/roving or at-sea monitor report of harassment and other issues, OMB# 0648–0605, (30 min/response);
23. OLE debriefing of dockside/roving or at-sea monitors, OMB# 0648–0605, (2 hr/response);
24. Copy of dockside/roving or at-sea monitoring service provider contract upon request, OMB# 0648–0605, (30 min/response);
25. Copy of dockside/roving or at-sea monitoring service provider information materials upon request, OMB# 0648–0605, (30 min/response);
26. Observer program pre-trip notification, OMB# 0648–0605, (2 min/response);
27. Daily VMS catch reports when fishing in the U.S./Canada Management Area and CA II SAPs, OMB# 0648–0605, (15 min/response);
28. Daily VMS catch reports when fishing in the CA I Hook Gear Haddock SAP, OMB# 0648–0605, (15 min/response);
29. Daily VMS catch reports when fishing in the Regular B DAS Program, OMB# 0648–0605, (15 min/response);
30. Copy of the dealer weigh-out slip or dealer signature of the dockside monitor report, OMB# 0648–0605, (2 min/response);
31. Forward trip start/end hails to NMFS, OMB# 0648–0605 (2 min/response); and
32. Notification to vessel/sector/NMFS of monitor emergency, OMB# 0648–0605 (5 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS will merge these new collections with existing collections approved under OMB control numbers 0648–0202 and 0648–0212 when possible. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burdern, to NMFS (see addresses) and by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Other Compliance Requirements

The only other compliance requirements associated with this final rule are those associated with the gear requirements specified for the NE multispecies RGAs. Any NE multispecies vessel that elects to fish in the common pool is required to utilize selective fishing gear when fishing in the NE multispecies RGAs. If a vessel does not already possess such selective gear, a new haddock separator trawl net, rope trawl, or Ruhle trawl is estimated to cost approximately $13,000, or it would cost about $750 to modify existing gear. Sector vessels are not subject to the RGA measures or the costs associated with such selective gear.

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

This final rule implements a number of measures that minimize the long-term economic impacts on small entities and provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated economic impacts associated with other measures implemented by this action. Rebuilding programs for overfished stocks implemented by this action ensure that sustainable fisheries can be achieved and maintained so that vessels can ultimately fish for, and land, all stocks managed by the FMP. Similarly, the process to specify ABCs and ACLs for each stock, distribute them among various fishery components that catch regulated species and ocean pout, and trigger applicable AMs once the ACLs are exceeded increases the likelihood that overfishing will be prevented and that overfished stocks will continue to rebuild. This would, in turn, increase vessel revenues by promoting sustainable fisheries over the longterm. Revised reporting requirements provide the timely data necessary to effectively monitor catch toward these ACLs and enhance data available to more accurately assess catch and, therefore, F for each stock. Failure to implement new rebuilding programs or a process to establish ACLs and AMs for each stock through this action would cause the FMP to be out of conformance with the Magnuson-Stevens Act. Further, without more timely and comprehensive reporting requirements, the data necessary to effectively monitor catch would not be available. This could cause ACLs to be unnecessarily exceeded and result in more stringent management measures in the future to end overfishing. Furthermore, if ACLs were not distributed among various components of the fishery that catch regulated species and ocean pout, all fisheries may be subject to additional reductions in fishing effort to end overfishing and achieve the conservation objectives of applicable law and the FMP. Thus, these further economic impacts are avoided through implementation of measures in this action.

Amendment 16 analysis (see Section 7.5.11.1.6 of the Amendment 16 FEIS) indicates that the effort control option selected for common pool vessels (i.e., 24-hr DAS counting in conjunction with an overall DAS reduction) is expected to result in substantially fewer adverse economic impacts, in both total fishing revenue and revenue from trips in which regulated species and ocean pout were the predominant species landed, than the other options considered. The conclusion that the selected alternative was superior with respect to the potential estimated negative economic impacts was the primary reason this particular effort control option was selected by the Council and approved by NMFS. Even though the no action alternative would have resulted in the fewest economic impacts to affected vessels and likely would have provided sufficient DAS for vessels to meet annual expenses, the no action alternative would not have achieved the reductions in F necessary to end overfishing, rebuild overfished stocks, or achieve the biological objectives of the FMP. Therefore, the no action alternative is not consistent with applicable law and cannot be implemented through this action. RGAs implemented under this action help increase the selectivity of the fishery, reducing catch of overfished stocks such as yellowtail flounder and winter flounder, and increasing the likelihood that conservation objectives for these stocks will be achieved. In doing so, economic impacts should be mitigated over the long term by increasing the probability that stocks will rebuild in a timely manner.

Recreational measures implemented by this action include an extended seasonal GOM cod prohibition. This measure is considered to be the most effective measure for reducing actual catch and, therefore, fishing mortality on GOM cod, in contrast to the other alternatives considered. By more effectively reducing catch of GOM cod, it is less likely that recreational catch of GOM cod will exceed the portion of the GOM cod ACL distributed to the recreational fishery and trigger AMs during the following FY. Avoiding implementation of AMs reduces economic impacts to recreational vessels, especially if less effective measures at reducing catch (trip or size limits) are implemented as AMs. These types of AMs would have to be implemented over a longer duration to achieve similar results as a possession prohibition, particularly if implemented late in the FY following an overage. As noted above, the recreational allocation implemented through this action ensures that the recreational fishery would not be subject to any further effort controls to reduce catch due to excessive catch by other components of the fishery. This should minimize adverse economic impacts to each component of the fishery, as each component would only be responsible for its portion of F on each stock. The elimination of the hook restriction allows the recreational fishery to more efficiently catch allowable limits, while the requirement to maintain at least 2 inches (5.08 cm) of contiguous skin on the fillets maintains existing practices that provide revenue to party/charter vessels, while facilitating the enforcement of size and trip limits.

The measures implemented by this action that specifically help minimize the significant economic impacts on small entities include revisions to the DAS Leasing and Transfer Programs, revisions to existing SAPs to facilitate the targeting of healthy stocks of haddock, increased trip limits for certain stocks, and revisions to sector measures. Changes to the DAS Leasing and Transfer Programs in Amendment 16 are intended to eliminate administrative obstacles that limited participation in these programs. This is likely to increase participation in these programs and, therefore, the economic efficiency of vessel operations. Such changes will also likely increase the possibility that vessels fishing under a NE multispecies DAS, particularly common pool vessels, would be able to acquire sufficient DAS to meet annual operating expenses and remain economically viable, despite additional effort controls in the NE multispecies fishery. These benefits would not have accrued under the no action option for each of these measures. Revisions to the existing SAPs facilitate the harvest of haddock by continuing the Eastern U.S./Canada Haddock SAP, expanding both the season and area for the CA I Hook Gear Haddock SAP, and revising the existing CA II Yellowtail Flounder SAP to provide opportunities to access CA II to target haddock even when there is insufficient GB yellowtail flounder TAC to support a targeted fishery for GB yellowtail flounder both inside and outside the existing CA II Yellowtail Flounder SAP. These revisions increase the likelihood that the fishery will harvest more of the abundant stocks of haddock, particularly on GB. Accordingly, this action will increase vessel revenue due to increased catch of available haddock resources, which may at least help offset reductions in revenue expected from increased effort controls necessary to rebuild overfished stocks. Although the effort reductions implemented by this action convert some Category A DAS to Category B DAS for common pool vessels, this may increase incentives to fish more selectively within these SAPs to enable vessels to avoid stocks of concern and continue fishing under a Category B DAS, thereby maximizing the economic return on available Category A and B DAS without compromising efforts to rebuild overfished stocks. Increased trip limits for GB cod and CC/GOM and SNE/MA yellowtail flounder are intended to offset the substantial effort reductions in the form of reductions in Category A DAS and 24-hr DAS counting implemented by this action. Because of the commingled nature of the NE multispecies fishery, revisions to these trip limits are expected to narrow the gap between F reductions achieved and F reductions necessary for these stocks under this action. As a result, these trip limits will not only meet the biological objectives of this action based upon supporting analysis in Amendment 16, but will also increase revenue for common pool vessels.

Several of the revisions to sector measures could help mitigate the economic impacts of this action. All approved sectors are exempt from several provisions, including portions of the GOM Rolling Closure Areas, NE multispecies DAS restrictions, seasonal closure areas, trip limits on stocks allocated to sectors, and the requirement to use 6.5-inch (16.51-cm) mesh when using selective trawl gear on GB with a 6-inch (15.24-cm) codend. Such exemptions reduce operational costs of sectors by minimizing the scale and complexity of analyses that need to be developed on a yearly basis to support approval of the sector's operation plans. All of these exemptions also help increase the operational efficiency of sector vessels and would likely lead to increased revenue for participating vessels. Because sector vessels are no longer be limited by DAS allocations and are instead limited by their available ACE, the economic incentive changes from maximizing the value of all species on a DAS to maximizing the value of the ACE. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips. Therefore, available information suggests that economic performance among sector vessels may be expected to improve relative to continuing to remain under effort controls. ACE trading is also expected to help ensure that sectors

have sufficient ACE available to continue operations in key stock areas and match individual sector ACE portfolios with recent fishing activity by participating vessels or available fishing opportunities. In addition, vessels that declared their intent to participate in one of the existing sectors are allocated GB cod based upon landings history of this stock between FYs 1996 through 2001. This was meant to increase the stability of sector allocations and preserve the value of existing sector permits, particularly for those vessels that invested in permits with high landings histories of this stock during this period. This action also provides the Regional Administrator with the authority to exempt sector vessels from some of the proposed reporting requirements for multi-area trips, or when participating in SMPs. Although such exemptions have not been granted at this time, if such exemptions are granted in the future, this may reduce the operational costs to vessels, as they would not be required to submit daily or trip-level catch reports via VMS that cost as much as $0.764 per submission. Finally, by authorizing 17 new sectors, participating vessels can pool harvesting resources and consolidate fishing effort onto fewer vessels to increase the flexibility and economic efficiency of fishing operations. Because sectors are self-selecting groups, they provide incentives to self-govern and assurance to participating vessels that sector members would not face catch reductions as a result of overages by other sectors or the common pool. Under the no action alternative, none of the above benefits associated with the proposed revised sector would be realized.

Many of the benefits of reducing costs and increasing the efficiency of vessel operations described above would not be realized had other options been selected by the Council and approved in this action. Even though the no action alternative for some measures would have resulted in the fewest economic impacts to affected vessels, the no action alternative, overall, would not have achieved the reductions in F necessary to rebuild overfished stocks or the biological objectives of the FMP and is, therefore, not consistent with applicable law. In contrast, the measures implemented by this action are consistent with applicable law because they would achieve the biological objectives of the FMP, including implementing rebuilding plans for newly overfished stocks and reducing F for all stocks necessary to rebuild stocks within established rebuilding periods, while resulting in the fewest economic impacts to affected entities among the other alternatives considered. Over the long-term, economic benefits from rebuilt stocks would mean that this action would produce the most economic benefits to affected entities once stocks rebuild when compared to the alternatives considered in this action. Other measures implemented by this final rule, but not specifically mentioned above, such as sector definitions, sector overage penalties, dockside and at-sea monitoring standards, and Sector joint/several liability provisions are all administrative in nature and have little, if any, influence over economic impacts to affected entities. A complete description of why each measure was selected can be found in the ROD developed in support of this action and in Section 4.2 of the Amendment 16 FEIS (see **ADDRESSES**).

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, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the multispecies, monkfish, and scallop fisheries, along with each individual issued a Federal dealer permit. The guide and this final rule will be available upon request.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 25, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR part 902, and 50 CFR part 648 are amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by:

■ a. Revising OMB control numbers for the existing entries for sections § 648.4, § 648.7, § 648.9, § 648.10, § 648.14, §§ 648.80 through 648.82, and §§ 648.85 through § 648.89; and

■ b. Adding new OMB control numbers in numerical order and new entries for § 648.90 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
648.4	–0202, –0212, and –0529.
* * * * *	
648.7	–0018, –0202, –0212, –0229, –0590, and –0605.
* * * * *	
648.9	–0202, –0404, and –0529.
648.10	–0202, –0529, and –0605.
* * * * *	
648.14	–0202, –0212, –0469, –0602, and –0605.
* * * * *	
648.80	–0202, –0422, and –0602.
648.81	–0202, –0412, and –0605.
648.82	–0202 and –0605.
* * * * *	
648.85	–0202, –0212, and –0605.
648.86	–0202, –0391, and –0605.
648.87	–0202 and –0605.
648.88	–0202 and –0605.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
648.89	–0202, –0412, and –0605.
648.90	–0202 and –0605.

* * * * *

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.2, revise the definitions for "NE multispecies or multispecies," "Regulated species," and "Sector," and add new definitions for "Annual catch entitlement (ACE)," "At-sea monitor," "Common pool trip," "Common pool vessel," "Dockside/roving monitor," "Electronic monitoring," "Observer/sea sampler," "Potential Sector contribution (PSC)," "Sector trip," and "Sector vessel" in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Annual catch entitlement (ACE), with respect to the NE multispecies fishery, means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual sector based upon the cumulative fishing history attached to each permit participating in that sector in a given year. This share may be adjusted due to penalties for exceeding the sector's ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly sector operations plan. When a sector's share of a NE multispecies stock, as determined by the fishing histories of vessels participating in that sector, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector during a particular fishing year.

At-sea monitor, with respect to the NE multispecies fishery, means any person responsible for observing, verifying, and reporting area fished, catch, and discards of all species by gear type for sector trips as part of an approved sector at-sea monitoring program.

* * * * *

Common pool trip, with respect to the NE multispecies fishery, means any trip taken by a common pool vessel under a NE multispecies DAS or under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit that lands regulated species or ocean pout.

Common pool vessel, with respect to the NE multispecies fishery, means any vessel issued a limited access NE multispecies permit or open access NE multispecies Handgear B permit that is not a member of an approved sector for a particular fishing year and that is not operating under the provisions of an approved sector operations plan. Such vessels must use a NE multispecies DAS, or be fishing under the provisions of a limited access NE multispecies Small Vessel or Handgear A permit, or an open access Handgear B permit, to land regulated species or ocean pout, and must comply with effort controls, trip limits, gear restricted areas, and other provisions specified in this part. Vessels fishing under the provisions of the common pool are also referred to as non-sector vessels.

* * * * *

Dockside/roving monitor, with respect to the NE multispecies fishery, means any person responsible for observing/verifying the offloads of all species by common pool or sector vessels either directly to a federally permitted dealer or to a truck for later delivery to a federally permitted dealer, and for certifying the accuracy of landed weights, as reported by federally permitted dealers, pursuant to this part.

* * * * *

Electronic monitoring, with respect to the NE multispecies fishery, means any equipment that is used to monitor area fished and the amount and identity of species kept and discarded in lieu of at-sea monitors as part of an approved Sector at-sea monitoring program.

* * * * *

Northeast (NE) multispecies or multispecies means the following species:

American plaice—*Hippoglossoides platessoides.*

Atlantic cod—*Gadus morhua.*

Atlantic halibut—*Hippoglossus hippoglossus.*

Atlantic wolffish—*Anarhichas lupus.*

Haddock—*Melanogrammus aeglefinus.*

Ocean pout—*Macrozoarces americanus.*

Offshore hake—*Merluccius albidus.*

Pollock—*Pollachius virens.*

Redfish—*Sebastes fasciatus.*

Red hake—*Urophycis chuss.*

Silver hake (whiting)—*Merluccius bilinearis.*

White hake—*Urophycis tenuis.*

Windowpane flounder—*Scophthalmus aquosus.*

Winter flounder—*Pleuronectes americanus.*

Witch flounder—*Glyptocephalus cynoglossus.*

Yellowtail flounder—*Pleuronectes ferruginea.*

* * * * *

Observer/sea sampler means any person certified/approved by NMFS to collect operational fishing data, biological data, or economic data through direct observation and interaction with operators of commercial fishing vessels as part of NMFS' Northeast Fisheries Observer Program and Northeast At-sea Monitoring Program. Observer/sea samplers are also referred to as fisheries observers, fisheries observers/sea samplers, and NMFS-certified fisheries observers/sea samplers.

* * * * *

Potential Sector contribution (PSC), with respect to the NE multispecies fishery, means an individual vessel's share of the ACL for each stock of regulated species or ocean pout that is derived from the fishing history associated with the permit issued to that particular vessel for the purposes of participating in a sector and contributing to that sector's ACE for each stock allocated to sectors under the NE Multispecies FMP.

* * * * *

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, white hake, Atlantic halibut, and Atlantic wolffish. Regulated species is also referred to as regulated NE multispecies.

* * * * *

Sector, with respect to the NE multispecies fishery, means a group of persons holding limited access NE multispecies permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and that have been allocated a portion of the TACs of species managed under the NE Multispecies FMP to achieve objectives consistent with the applicable goals and objectives of the FMP. Each sector must meet the sector eligibility and minimum size requirements specified in § 648.87(a)(3) and (4) to be approved by NMFS.

Sector trip, with respect to the NE multispecies fishery, means any trip taken by a sector vessel subject to the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c), in which the vessel declared its intent to fish in the NE multispecies fishery pursuant to § 648.10.

Sector vessel, with respect to the NE multispecies fishery, means any vessel assigned a permit that is a member of an approved sector for a particular fishing year and that is subject to the restrictions and conditions of an approved sector operations plan, as specified in § 648.87.

* * * * *

■ 3. In § 648.4, remove paragraph (a)(1)(i)(I)(*3*) and revise paragraphs (a)(1)(i)(E) and (c)(2)(iii)(A) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

(E) *Replacement vessels.* An owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags, unless the vessel already possesses valid gillnet tags, as identified by the Regional Administrator. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining valid tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete only for the purposes of obtaining authorization to fish in the NE multispecies gillnet fishery and otherwise will be processed or issued without a gillnet authorization.

* * * * *

■ 4. In § 648.7, revise paragraphs (b)(1)(i), (e), and (f)(2)(i); and add paragraphs (a)(4), (h), and (i) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(a) * * *

(4) *Facilitation of a dockside/roving monitor report.* Any federally permitted dealer, or any individual acting in the capacity of a dealer, that purchases or receives fish from a vessel operating under the provisions of an approved sector operations plan, as specified in § 648.87(c), or from a common pool vessel starting in fishing year 2012 must provide a copy of any weigh-out documents or dealer receipts for that particular offloading event to the dockside/roving monitor and vessel and allow the dockside/roving monitor to sign a copy of the official weigh-out document or dealer receipt retained by the dealer, or sign a dockside monitoring report provided by a dockside/roving monitor that verifies the amount of each species offloaded, as instructed by the Regional Administrator.

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. As stated in paragraph (f)(2)(i) of this section, if no fishing trip is made during a week or month, a report stating so must be submitted for each week or month, as applicable, based upon whether any fishing activity occurred during a particular reporting week or month (i.e., starting a trip, landing, or offloading catch will constitute fishing during a reporting week or month). If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (i.e., less than 23 inches (58.42 cm), total length) or "large" (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(e) *Record retention*—(1) *Dealer records.* Any record, as defined in § 648.2, related to fish possessed, received, or purchased by a dealer that is required to be reported, must be retained and made available for immediate review for a total of 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain the required records and reports at their principal place of business.

(2) *VTRs.* Copies of fishing log reports must be kept on board the vessel and available for review for at least 1 year, and must be retained for a total of 3 years after the date the fish were last possessed, landed, and sold.

(3) *Dockside/roving and at-sea monitor reports.* Any record, as defined in § 648.2, related to fish offloaded and observed by a dockside/roving or at-sea monitor, including any reports provided to NMFS, sector managers, or another third-party service provider specified in paragraph (h) of this section, must be retained and made available for immediate review for a total of 3 years after the date the fish were first offloaded. Dockside/roving and at-sea monitor providers must retain the required records and reports at their principal place of business.

(f) * * *

(2) * * *

(i) For any vessel not issued a NE multispecies permit, fishing vessel log

reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. If no fishing trip is made during a particular month for such a vessel, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies permit, fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If no fishing trip is made during a reporting week for such a vessel, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month that the VTR must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (i.e., starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies permit begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (i.e., after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (i.e., a "did not fish" report) would not be required for either week.

* * * * *

(h) *Dockside/roving monitor reports.* Any dockside/roving monitor assigned to observe the offload of a vessel on a sector trip must record the amounts of all species offloaded and report such amounts to that particular vessel's sector manager and a third-party service provider, if specified in the operations plan or the private contract between the dockside/roving monitor service provider and an individual sector. Such reports must be made available to dealers for signature, as instructed by the Regional Administrator.

(i) *At-sea monitor/electronic monitoring reports.* Any at-sea monitor assigned to observe a sector trip and any third-party service provider analyzing data from electronic monitoring equipment deployed on a sector trip must submit reports on catch, discard, and other data elements specified by the Regional Administrator to NMFS, the sector manager, and monitoring contractor, as instructed by the Regional Administrator.

■ 5. In § 648.10, revise paragraphs (b)(4) and (e)(1)(v), and add paragraph (k) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(4) A vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or catches regulated species or ocean pout while on a sector trip; or a vessel issued a limited access NE multispecies small vessel category or Handgear A permit that fishes in multiple stock areas pursuant to paragraph (k)(2) of this section;

* * * * *

(e) * * *

(1) * * *

(v) The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or that catches regulated species or ocean pout while on a sector trip, as specified in paragraph (b)(4) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board, meeting all requirements of this part, prior to fishing under a NE multispecies DAS or under the provisions of an approved sector operations plan.

* * * * *

(k) *Area-specific reporting requirements for NE multispecies vessels.*—(1) *Reporting requirements for all limited access NE multispecies vessel owners or operators.* In addition to any other reporting requirements specified in this part, the owner or operator of any vessel issued a limited access NE multispecies permit on either a common poor or sector trip must declare its intent to fish within one or more of the NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, and provide the VTR serial number for the first page of the VTR for that particular trip via VMS prior to leaving port at the start of a fishing trip, as instructed by the Regional Administrator.

(2) *Reporting requirements for NE multispecies vessel owners or operators fishing in more than one broad stock area per trip.* Unless otherwise provided in this paragraph (k)(2), the owner or operator of any vessel issued a NE multispecies limited access permit that has declared its intent to fish within multiple NE multispecies broad stock areas, as defined in paragraph (k)(3) of this section, on the same trip must submit a trip-level hail report via VMS detailing the amount of each regulated species retained (in pounds, landed weight) and the total amount of all species retained (in pounds, landed weight), including NE multispecies and species managed by other FMPs, from each broad stock area prior to crossing the VMS demarcation line, as defined in § 648.10, upon its return to port following each fishing trip on which regulated species were caught, as instructed by the Regional Administrator. This reporting requirement is in addition to the reporting requirements specified in paragraph (k)(1) of this section and any other reporting requirements specified in this part. A vessel is exempt from the reporting requirements specified in this paragraph (k)(2) if it is fishing in a special management program, as specified in § 648.85, and is required to submit daily VMS catch reports consistent with the requirements of that program. The Regional Administrator may adjust the reporting frequency specified in this paragraph and may exempt vessels on a sector trip from the reporting requirements specified in this paragraph (k)(2) if it is determined that such reporting requirements would duplicate those specified in § 648.87(b).

(3) *NE multispecies broad stock areas.* For the purposes of the area-specific reporting requirements listed in paragraphs (k)(1) and (2) of this section, the NE multispecies broad stock areas are defined in paragraphs (k)(3)(i) through (iv) of this section. Copies of a map depicting these areas are available from the Regional Administrator upon request.

(i) *GOM Stock Area 1.* The GOM Stock Area 1 is bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

GOM STOCK AREA 1

Point	N. latitude	W. longitude
G1	(1)	(1)
CII3	(1)	67°20′
G6	42°20′	67°20′
G10	42°20′	70°00′
G9	(2)	70°00′

[1] The intersection of the shoreline and the U.S.-Canada maritime boundary.

[2] The intersection of the Cape Cod, MA, coastline and 70°00′ W. long.

(ii) *Inshore GB Stock Area 2.* The Inshore GB Stock Area 2 is defined by straight lines connecting the following points in the order stated:

INSHORE GB STOCK AREA 2

Point	N. latitude	W. longitude
G9	(2)	70°00′
G10	42°20′	70°00′
IGB1	42°20′	68°50′
IGB2	41°00′	68°50′
IGB3	41°00′	69°30′
IGB4	41°10′	69°30′
IGB5	41°10′	69°50′
IGB6	41°20′	69°50′
IGB7	41°20′	70°00′
G12	(2)	70°00′

[1] The intersection of the Cape Cod, MA, coastline and 70°00′ W. long.
[2] South-facing shoreline of Cape Cod, MA.

(iii) *Offshore GB Stock Area 3.* The Offshore GB Stock Area 3 is bounded on the east by the U.S./Canadian maritime boundary and defined by straight lines connecting the following points in the order stated:

OFFSHORE GB STOCK AREA 3

Point	N. latitude	W. longitude
IGB1	42°20′	68°50′
G6	42°20′	67°20′
CII3	(1)	67°20′
SNE2	39°00′	(1)
SNE3	39°00′	69°00′
SNE4	39°50′	69°00′
SNE5	39°50′	68°50′
IGB1	42°20′	68°50′

[1] The U.S.-Canada maritime boundary as it intersects with the EEZ.

(iv) [Reserved]

■ 6. In § 648.11, add paragraphs (j) and (k) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(j) In the event that a vessel is requested by the Regional Administrator to carry a NMFS-certified fisheries observer pursuant to paragraph (a) of this section and is also selected to carry an at-sea monitor as part of an approved sector at-sea monitoring program specified in § 648.87(b)(1)(v) for the same trip, only the NMFS-certified fisheries observer is required to go on that particular trip.

(k) *NE multispecies observer coverage*—(1) *Pre-trip notification.* Unless otherwise specified in this paragraph (k), or notified by the Regional Administrator, the owner, operator, or manager of a vessel (i.e., vessel manager or sector manager) issued a limited access NE multispecies permit that is fishing under a NE multispecies DAS or on a sector trip, as defined in this part, must provide advanced notice to NMFS of the vessel name, permit number, and sector to which the vessel belongs, if applicable; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; area to be fished; and gear type to be used at least 48 hr prior to departing port on any trip declared into the NE multispecies fishery pursuant to § 648.10 or § 648.85, as instructed by the Regional Administrator, for the purposes of selecting vessels for observer deployment. For trips lasting 48 hr or less in duration from the time the vessel leaves port to begin a fishing trip until the time the vessel returns to port upon the completion of the fishing trip, the vessel owner, operator, or manager may make a weekly notification rather than trip-by-trip calls. For weekly notifications, a vessel must notify NMFS by 0001 hr of the Friday preceding the week (Sunday through Saturday) that they intend to complete at least one NE multispecies DAS or sector trip during the following week and provide the date, time, port of departure, area to be fished, and gear type to be used for each trip during that week. Trip notification calls must be made no more than 10 days in advance of each fishing trip. The vessel owner, operator, or manager must notify NMFS of any trip plan changes at least 24 hr prior to vessel departure from port. A vessel may not begin the trip without being issued an observer notification or a waiver by NMFS.

(2) *Vessel selection for observer coverage.* NMFS shall notify the vessel owner, operator, or manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's or manager's notification of the prospective trip, as specified in paragraph (k)(1) of this section. All trip notifications shall be issued a unique confirmation number. A vessel may not fish in an area with an observer waiver confirmation number that does not match the trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are valid for 48 hr from the intended sail date. If a trip is interrupted and returns to port due to bad weather or other circumstance beyond the operator's control, and goes back out within 48 hr, the same confirmation number and observer status remains. If the layover time is greater than 48 hr, a new trip notification must be made by the operator, owner, or manager of the vessel.

■ 7. In § 648.14,

■ a. Revise the introductory text to paragraph (k)(12)(iii);

■ b. Revise paragraphs (e)(1), (k)(3)(i), (k)(5)(vi)(B), (k)(6)(ii)(A)(*1*), (k)(7)(i)(B), (k)(9)(iv)(B), (k)(11)(i)(A)(*2*), (k)(11)(ii), (k)(11)(iii)(D), (k)(11)(iv)(A), (k)(11)(v)(A), (k)(11)(vi), (k)(12)(iii)(A) through (E), (k)(12)(vi)(D), (k)(12)(vi)(G), (k)(12)(vi)(I), (k)(12)(vii)(A)(*1*) and (*2*), (k)(12)(viii), (k)(13)(i)(A), (k)(13)(ii)(C), and (k)(14);

■ c. Remove and reserve paragraph (k)(9)(i), (k)(9)(ii)(G) and (I), (k)(11)(v)(B)(*1*), (k)(12)(iv), and (k)(13)(ii)(D)(*3*); and

■ d. Add paragraphs (d)(3), (k)(2)(iii), (k)(7)(i)(C)(*4*), (k)(9)(ii)(M), (k)(9)(iii)(E) and (F), (k)(12)(iii)(F), (k)(13)(ii)(I) and (J), (k)(16)(v) through (vii), (k)(18), and (k)(19) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(d) * * *

(3) Fail to comply with the appropriate VMS reporting requirements, as specified in § 648.10.

* * * * *

(e) * * *

(1) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler conducting his or her duties; any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part; any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g); or any dockside/roving monitor conducting his or her duties, including those duties authorized in § 648.82(n)(2) or § 648.87(b)(1)(v)(B)(*1*).

* * * * *

(k) * * *

(2) * * *

(iii) Fail to comply with the pre-trip notification requirements of the NE multispecies observer program specified in § 648.11(k).

(3) * * *

(i) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species or ocean pout in excess of the possession limits specified in § 648.82, § 648.85, § 648.86, or § 648.87 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17, or unless the regulated species or ocean pout are purchased or received from a vessel that caught them on a sector trip and such species are exempt from such possession limits in accordance with an approved sector operations plan, as specified in § 648.87(c).

* * * * *

(5) * * *

(vi) * * *

(B) Possess, land, or fish for regulated species or ocean pout, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a LAGC permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a Federal NE multispecies permit and fishes for, possesses, or lands NE multispecies exclusively in state waters.

* * * * *

(6) * * *

(ii) * * *

(A) * * *

(*1*) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS or on a sector trip with gillnet gear, fail to comply with gillnet tagging requirements specified in §§ 648.80(a)(3)(iv)(B)(*4*), (a)(3)(iv)(C), (a)(4)(iv)(B)(*3*), (b)(2)(iv)(B)(*3*), and (c)(2)(v)(B)(*3*), or fail to produce immediately, or cause to be produced immediately, gillnet tags when requested by an authorized officer.

* * * * *

(7) * * *

(i) * * *

(B) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), (f)(2)(vi), or as authorized under § 648.85.

(C) * * *

(*4*) Fail to comply with the restrictions on fishing and gear specified in § 648.81(n) for the NE multispecies restricted gear areas.

* * * * *

(9) * * *

(ii) * * *

(M) Lease NE multispecies DAS to or from a common pool vessel if either the Lessor or the Lessee vessel is a sector vessel.

(iii) * * *

(E) Transfer NE multispecies DAS to or from a common pool vessel if either the Transferor or the Transferee vessel is a sector vessel.

(F) Transfer NE multispecies DAS to or from a sector vessel if either the Transferor or the Transferee vessel is enrolled in a different sector for that particular fishing year.

(iv) * * *

(B) For any common pool or sector vessel, fail to comply with the gillnet requirements and restrictions specified in § 648.82(j), unless otherwise exempted pursuant to § 648.87.

* * * * *

(11) * * *

(i) * * *

(A) * * *

(*2*) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b) or exempted under § 648.87.

* * * * *

(ii) *Gear requirements for all persons.* If fishing with trawl gear under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl, flounder trawl net, or Ruhle trawl, as specified in § 648.85(a)(3)(iii) and (b)(6)(iv)(J)(*1*), unless using other gear authorized under § 648.85(b)(6) or (8).

(iii) * * *

(D) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), but not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

* * * * *

(iv) * * *

(A) If fishing under a NE multispecies DAS or on a sector trip in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

* * * * *

(v) * * *

(A) *All persons.* If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8) on the same trip, fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(3)(xi) and (b)(8)(v)(I), or the minimum Category A DAS requirement specified in § 648.85(b)(3)(xii) and (b)(8)(v)(J).

* * * * *

(vi) *Closure of the U.S./Canada Area for all persons.* If fishing under a NE multispecies DAS or on a sector trip, declare into, enter, or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1) if the area is closed under the authority of the Regional Administrator as described in § 648.85(a)(3)(iv)(D) or (E), unless fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3) or the Eastern U.S./Canada Haddock SAP Program specified in § 648.85(b)(8).

(12) * * *

(iii) *Closed Area II Yellowtail Flounder/Haddock SAP restrictions for all persons.* (A) If fishing under the Closed Area II Yellowtail Flounder/Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies or ocean pout from the area specified in § 648.85(b)(3)(ii), unless in compliance with § 648.85(b)(3)(i) through (xiii).

(B) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v) or § 648.85(b)(8)(v)(D).

(C) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder/Haddock SAP outside of the season specified in § 648.85(b)(3)(iii).

(D) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), exceed the number of trips specified in § 648.85(b)(3)(vi) or (vii).

(E) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(F) If fishing in the Closed Area II Yellowtail Flounder/Haddock SAP specified in § 648.85(b)(3), fail to comply with the gear requirements specified in § 648.85(b)(3)(x).

* * * * *

(vi) * * *

(D) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable DAS use restrictions specified in § 648.85(b)(7)(iv)(A) and (b)(7)(vi)(A).

* * * * *

(G) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable gear restrictions specified in § 648.85(b)(7)(iv)(E), and (b)(7)(v)(A) or (b)(7)(vi)(B).

* * * * *

(I) If fishing in the Closed Area I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the applicable reporting requirement specified in § 648.85(b)(7)(v)(C) or (b)(7)(vi)(D).

(vii) * * *

(A) * * *

(*1*) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season specified in § 648.85(b)(8)(iv), fail to comply with § 648.85(b)(8)(v).

(*2*) *VMS and declaration requirements.* (*i*) If fishing under a NE multispecies DAS or on a sector trip in the Eastern U.S./Canada Haddock SAP

in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(*ii*) If fishing under a NE multispecies DAS or on a sector trip, fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), unless declared into the program in accordance with § 648.85(b)(8)(v)(D).

* * * * *

(viii) Discard legal-sized NE regulated multispecies or ocean pout while fishing under a Special Access Program, as described in § 648.85(b)(3)(xi), (b)(6)(iv)(E), (b)(7)(iv)(H), or (b)(8)(v)(I), unless otherwise required pursuant to possession prohibitions specified in § 648.86 or § 648.87.

(13) * * *

(i) * * *

(A) Under § 648.85 or § 648.86, fail to offload a sufficient amount of regulated species or ocean pout subject to a daily possession limit at the end of a fishing trip, as required by § 648.86(i).

(ii) * * *

(C) Fish for, possess at any time during a trip, or land regulated NE multispecies or ocean pout specified in § 648.86 after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted by § 648.82(b)(5), § 648.87, or § 648.89, or allowed pursuant to § 648.85(b)(6) or § 648.88.

* * * * *

(I) For common pool vessels, including vessels issued a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, land regulated species or ocean pout more than once within any 24-hr period.

(J) For common pool vessels, including vessels issued a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, fail to comply with the most restrictive trip limits applicable when fishing in multiple areas, as specified in § 648.85 or § 648.86.

(14) *Sector requirements.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit and fishing on a sector trip to do any of the following:

(i) Fail to abide by the restrictions specified in § 648.87(b)(1).

(ii) Catch regulated species or ocean pout in excess of ACE allocated or transferred to that sector pursuant to § 648.87(b)(1)(i) and (viii), respectively.

(iii) Fish in a particular stock area, the Eastern U.S./Canada Area, or a SAP if the sector has not been allocated, does not acquire, or otherwise has insufficient ACE remaining/available for all stocks caught in that area, or fail to operate in a manner that would not catch stocks for which the sector has not been allocated ACE, as described in an approved sector operations plan pursuant to § 648.87(b)(2)(xiv), as prohibited in § 648.87(b)(1)(ii).

(iv) Violate the provisions of an approved sector operations plan or letter of authorization issued by the Regional Administrator, as required by § 648.87(b)(1)(iv) and (b)(2).

(v) Fail to remain in the sector for the remainder of the fishing year, as required by § 648.87(b)(1).

(vi) Unless otherwise required to use a NE multispecies DAS to participate in another fishery, fish in the NE multispecies DAS program in a given fishing year or, for common pool vessels, fish in an approved sector in a given fishing year.

(vii) If a vessel is removed from a sector for violating the Sector rules, fish under the NE multispecies regulations for common pool vessels.

(viii) Discard legal-sized regulated species or ocean pout allocated to sectors pursuant to § 648.87(b)(1)(i), as prohibited by § 648.87(b)(1)(v).

(ix) Fail to comply with the reporting requirements specified in § 648.87(b)(1)(v) or (vi).

(x) Offload fish before a dockside/roving monitor arrives, if selected to have its offloading events observed by a dockside/roving monitor, as prohibited by § 648.87(b)(5)(i)(C).

(xi) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel or before electronic monitoring equipment has been properly installed if assigned to carry either an at-sea monitor or electronic monitoring equipment for that trip, as prohibited by § 648.87(b)(6)(iii)(A).

(xii) Leave port to begin a trip if a vessel has failed a review of safety issues by an at-sea monitor and has not successfully resolved any identified safety deficiencies, as prohibited by § 648.87(b)(6)(iv)(A).

* * * * *

(16) * * *

(v) *Size limits.* If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout that are smaller than the minimum fish sizes specified in § 648.89(b)(1) and (b)(3).

(vi) *Identification.* If fishing under the recreational or charter/party regulations, possess regulated species or ocean pout without at least 2 square inches (5.1 square cm) of contiguous skin that allows for the ready identification of the species of fish upon landing.

(vii) *Atlantic wolffish.* If fishing under the recreational or charter/party regulations, possess Atlantic wolffish.

* * * * *

(18) *Trimester TAC AM*—(i) *Vessel and operator permit holders.* (A) Fish for, harvest, possess, or land regulated species or ocean pout in or from the closed areas specified in § 648.82(n)(2)(ii) once such areas are closed pursuant to § 648.82(n)(2)(i).

(B) Fail to comply with the reporting/recordkeeping requirements specified in § 648.87(b)(5).

(C) Employ a dockside/roving monitor service provider that is not approved/certified by NMFS, as specified in § 648.82(n)(2)(iv)(B).

(19) *Dockside/roving and at-sea/electronic monitoring service providers.* It is unlawful for any dockside/roving and at-sea/electronic monitoring service provider, including individual dockside/roving or at-sea monitors, to do any of the following:

(i) Fail to comply with the operational requirements, including the recordkeeping and reporting requirements, specified in § 648.87(b)(5) or (6).

(ii) Provide false or inaccurate information regarding area fished; species identification; or amount of each species kept, discarded, or landed.

* * * * *

■ 8. In § 648.80, revise the introductory text to paragraphs (a)(4)(iv), (a)(11), (b)(2)(iv), (b)(11), and (c)(2)(v); and revise paragraphs (a)(3)(i), (a)(3)(iv)(A)(*1*), (a)(3)(iv)(B)(*1*) and (*2*), (a)(3)(vi), (a)(4)(i), (a)(4)(iv)(A), (a)(4)(iv)(B)(*1*), (a)(8)(i), (a)(11)(i)(B), (b)(2)(i), (b)(2)(iv)(A), (b)(2)(iv)(B)(*1*), (b)(2)(vi), (b)(11)(i), (c)(2)(i), (c)(2)(v)(A), (c)(2)(v)(B)(*1*), and (h)(2) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) *Vessels using trawls.* Except as provided in paragraphs (a)(3)(i) and (vi) of this section and § 648.85(b)(6), and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the

codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) * * *

(A) * * *

(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for any vessel that obtains an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing in the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(B) * * *

(*1*) *Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for any vessel that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under the NE multispecies DAS program or on a sector trip in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(*2*) *Number of nets.* A day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

* * * * *

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(4) * * *

(i) *Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, this paragraph (a)(4)(i), § 648.85(b)(6) and (8), and § 648.87(c)(2)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except a midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraphs (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GB Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) * * *

(*1*) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

* * * * *

(8) * * *

(i) *Exemption allowing no incidental catch of regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i) of this section, and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental bycatch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining

whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. The Regional Administrator may modify or delete an existing exemption if he/she determines that the catch of regulated species is equal to or greater than 5 percent, by weight of total catch, or another pertinent approved amount, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

* * * * *

(11) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Regulated Mesh Area specified in paragraph (a)(1) of this section, when not under a NE multispecies DAS, providing the vessel fishes in the GOM Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. latitude	W. longitude
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
SM6	43°58′	67°22′
SM7	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) * * *

(B) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area under the exemption specified in this paragraph (a)(11) must fish with dredge gear. The combined dredge width in use by, or in possession on board, may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

* * * * *

(b) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and § 648.85(b)(6), and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the SNE Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) * * *

(*1*) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

* * * * *

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(11) *SNE Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE RMA when not under a NE multispecies DAS, provided the vessel fishes in the SNE Scallop Dredge Exemption Area and complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south and east by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
Sc1	(1)	72°30′
Sc2	40°00′	72°30′
Sc3	40°00′	71°40′
Sc4	39°50′	71°40′
Sc5	39°50′	70°00′
Sc6	(2)	70°00′

Point	N. latitude	W. longitude
Sc7	(3)	70°00′
Sc8	(4)	70°00′

[1] South facing shoreline of Long Island, NY.
[2] South facing shoreline of Nantucket, MA.
[3] North facing shoreline of Nantucket, MA.
[4] South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
Sc9	41°00′	(1)
Sc10	41°00′	71°40′
Sc11	(2)	71°40′

[1] East facing shoreline of the south fork of Long Island, NY.
[2] South facing shoreline of RI.

* * * * *

(c) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, and § 648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area (§ 648.104(a)), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the MA Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(B) * * *

(*1*) *Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS or on a sector trip and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

* * * * *

(h) * * *

(2) Limited access scallop vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species or ocean pout, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS, but are prohibited from using scallop dredge gear on such trips.

* * * * *

■ 9. In § 648.81, revise the introductory text for paragraph (f)(2)(ii); revise paragraphs (b)(2)(iii) and (j)(1); and add paragraphs (f)(2)(vi), (g)(2)(iv) and (v), and (n) to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(b) * * *

(2) * * *

(iii) Fishing in the CA II Yellowtail Flounder/Haddock SAP or the Eastern U.S./Canada Haddock SAP Program as specified in § 648.85(b)(3)(ii) or (b)(8)(ii), respectively; or

* * * * *

(f) * * *

(2) * * *

(ii) That are fishing with or using exempted gear as defined under this part, or in the Midwater Trawl Gear Exempted Fishery as specified under 648.80(d), and excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

* * * * *

(vi) That are fishing on a sector trip, provided such vessels comply with the following restricted areas referred to as the Sector Rolling Closure Areas:

(A) *Sector Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. latitude	W. longitude
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
SGM1	42°00′	70°00′
SGM2	43°00′	70°00′
SGM3	43°00′	(4)

[1] MA shoreline.
[2] Cape Cod, MA shoreline on Cape Cod Bay.
[3] Cape Cod, MA shoreline on the Atlantic Ocean.
[4] NH shoreline.

(B) *Sector Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. latitude	W. longitude
SGM4	42°30′	(1)
SGM5	42°30′	70°00′
SGM6	43°00′	70°00′
SGM7	43°00′	69°30′
SGM8	43°30′	69°30′
GM18	43°30′	(2)

[1] MA shoreline.
[2] ME shoreline.

(C) *Sector Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(2)(vi) apply to Sector Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

SECTOR ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. latitude	W. longitude
SGM9	43°00′	(1)
SGM6	43°00′	70°00′
SGM10	43°30′	70°00′
SGM11	43°30′	69°00′
GM22	(2)	69°00′

[1] NH shoreline.
[2] ME shoreline.

(g) * * *

(2) * * *

(iv) That are fishing in the CA I Hook Gear Haddock Access Area pursuant to § 648.85(b)(7).

(v) That are fishing under the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c).

* * * * *

(j) * * *

(1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
Inshore Boundary		
to 120		
69	40°07.9′	68°36.0′
70	40°07.2′	68°38.4′
71	40°06.9′	68°46.5′
72	40°08.7′	68°49.6′
73	40°08.1′	68°51.0′
74	40°05.7′	68°52.4′
75	40°03.6′	68°57.2′
76	40°03.65′	69°00.0′
77	40°04.35′	69°00.5′
78	40°05.2′	69°00.5′
79	40°05.3′	69°01.1′
80	40°08.9′	69°01.75′
81	40°11.0′	69°03.8′
82	40°11.6′	69°05.4′
83	40°10.25′	69°04.4′
84	40°09.75′	69°04.15′
85	40°08.45′	69°03.6′
86	40°05.65′	69°03.55′
87	40°04.1′	69°03.9′
88	40°02.65′	69°05.6′
89	40°02.00′	69°08.35′
90	40°02.65′	69°11.15′
91	40°00.05′	69°14.6′
92	39°57.8′	69°20.35′
93	39°56.65′	69°24.4′
94	39°56.1′	69°26.35′
95	39°56.55′	69°34.1′
96	39°57.85′	69°35.5′
97	40°00.65′	69°36.5′
98	40°00.9′	69°37.3′
99	39°59.15′	69°37.3′
100	39°58.8′	69°38.45′
102	39°56.2′	69°40.2′
103	39°55.75′	69°41.4′
104	39°56.7′	69°53.6′
105	39°57.55′	69°54.05′
106	39°57.4′	69°55.9′
107	39°56.9′	69°57.45′
108	39°58.25′	70°03.0′
110	39°59.2′	70°04.9′
111	40°00.7′	70°08.7′
112	40°03.75′	70°10.15′
115	40°05.2′	70°10.9′
116	40°02.45′	70°14.1′
119	40°02.75′	70°16.1′
to 181		
Offshore Boundary		
to 69		
120	40°06.4′	68°35.8′
121	40°05.25′	68°39.3′
122	40°05.4′	68°44.5′
123	40°06.0′	68°46.5′
124	40°07.4′	68°49.6′
125	40°05.55′	68°49.8′
126	40°03.9′	68°51.7′
127	40°02.25′	68°55.4′
128	40°02.6′	69°00.0′
129	40°02.75′	69°00.75′
130	40°04.2′	69°01.75′
131	40°06.15′	69°01.95′
132	40°07.25′	69°02.0′
133	40°08.5′	69°02.25′
134	40°09.2′	69°02.95′
135	40°09.75′	69°03.3′
136	40°09.55′	69°03.85′
137	40°08.4′	69°03.4′
138	40°07.2′	69°03.3′
139	40°06.0′	69°03.1′
140	40°05.4′	69°03.05′
141	40°04.8′	69°03.05′
142	40°03.55′	69°03.55′
143	40°01.9′	69°03.95′
144	40°01.0′	69°04.4′
146	39°59.9′	69°06.25′
147	40°00.6′	69°10.05′
148	39°59.25′	69°11.15′
149	39°57.45′	69°16.05′
150	39°56.1′	69°20.1′
151	39°54.6′	69°25.65′
152	39°54.65′	69°26.9′
153	39°54.8′	69°30.95′
154	39°54.35′	69°33.4′
155	39°55.0′	69°34.9′
156	39°56.55′	69°36.0′
157	39°57.95′	69°36.45′
158	39°58.75′	69°36.3′
159	39°58.8′	69°36.95′
160	39°57.95′	69°38.1′
161	39°54.5′	69°38.25′
162	39°53.6′	69°46.5′
163	39°54.7′	69°50.0′
164	39°55.25′	69°51.4′
165	39°55.2′	69°53.1′
166	39°54.85′	69°53.9′
167	39°55.7′	69°54.9′
168	39°56.15′	69°55.35′
169	39°56.05′	69°56.25′
170	39°55.3′	69°57.1′
171	39°54.8′	69°58.6′
172	39°56.05′	70°00.65′
173	39°55.3′	70°02.95′
174	39°56.9′	70°11.3′
175	39°58.9′	70°11.5′
176	39°59.6′	70°11.1′
177	40°01.35′	70°11.2′
178	40°02.6′	70°12.0′
179	40°00.4′	70°12.3′
180	39°59.75′	70°13.05′
181	39°59.3′	70°14.0′
to 119		

* * * * *

(n) *NE Multispecies Restricted Gear Areas.* With the exception of a vessel on a sector trip, any vessel issued a limited access NE multispecies permit that is fishing any part of a trip in one or both of the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section must comply with all applicable restrictions specified in this paragraph (n). If such a vessel fishes inside/outside of these areas on the same trip, the most restrictive measures for the areas fished apply, including, but not limited to, gear restrictions and trip limits.

(1) *Western GB Multispecies Restricted Gear Area.* The Western GB Multispecies Restricted Gear Area is defined as the area bounded by straight lines connecting the following points in the order stated:

WESTERN GB MULTISPECIES RESTRICTED GEAR AREA

Point	N. latitude	W. longitude
G8	42°00′	69°30′
GM5	42°00′	68°30′
MRGA1	41°00′	68°30′
YTA5	41°00′	69°30′
G8	42°00′	69°30′

(2) *SNE Multispecies Restricted Gear Area.* The SNE Multispecies Restricted Gear Area is defined as the area bounded by straight lines connecting the following points in the order stated:

SNE MULTISPECIES RESTRICTED GEAR AREA

Point	N. latitude	W. longitude
MRAG1	41°30′	([1])
MRGA2	41°30′	70°30′
MRGA3	([2])	70°30′
MRGA4	([3])	70°30′
MRGA5	40°00′	70°30′
MRGA6	40°00′	71°30′
MRGA7	40°30′	71°30′
SNEMA3	40°30′	72°00′
MRGA8	([4])	72°00′
MRGA9	([5])	72°00′
MRGA10	([6])	72°00′

[1] East-facing shoreline of RI.
[2] North-facing shoreline of Martha's Vineyard, MA.
[3] South-facing shoreline of Martha's Vineyard, MA.
[4] South-facing shoreline of Long Island, NY.
[5] North-facing shoreline of Long Island, NY.
[6] South-facing shoreline of CT.

(3) *Gear restrictions.* Unless otherwise authorized pursuant to paragraph (n)(3)(iv) of this section, a limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section may only use one or more of the gear types listed in paragraphs (n)(3)(i) through (iii) of this section. No other type of fishing gear may be on board the vessel when fishing in the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section.

(i) *Trawl gear.* A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section using trawl gear may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); or a rope separator trawl, as specified in paragraph (n)(3)(i)(A) of this section.

(A) *Rope separator trawl.* A rope separator trawl is defined as a four-seam bottom trawl net (i.e., a net with a top and bottom panel and two side panels) modified to include both a horizontal separator panel and an escape opening in the bottom belly of the net below the separator panel, as further specified in

paragraphs (n)(3)(i)(A)(*1*) through (*3*) of this section.

(*1*) *Mesh size.* Unless otherwise specified in this paragraph (n)(3)(i)(A)(*1*), the minimum mesh size applied throughout the body and extension of a rope separator trawl must be 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, or any combination thereof. Mesh in the bottom belly of the net must be 13-inch (33-cm) diamond mesh. Unless otherwise specified in this part, the codend mesh size must be consistent with mesh size requirements specified in § 648.80. The mesh size of a particular section of the rope separator trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(*2*) *Separator panel.* The separator panel must consist of parallel lines made of fiber rope, the ends of which are attached to each side of the net starting at the forward edge of the square of the net and running aft toward the extension of the net. The leading rope must be attached to the side panel at a point at least ⅓ of the number of meshes of the side panel above the lower gore, and the panel of ropes shall slope downward toward the extension of the net. For example, if the side panel of the net is 42 meshes tall, the leading rope must be attached at least 14 meshes above the lower gore. The forward ⅔ of the separator ropes that comprise the separator panel must be no farther than 26 inches (66 cm) apart, with the after ⅓ of the separator ropes that comprise the separator panel being no farther than 13 inches (33 cm) apart. The ends of the aftermost rope shall be attached to the bottom belly at a point ⅙ of the number of meshes of the after end of the bottom belly below the lower gore. The separator ropes should be of sufficient length not to impinge upon the overall shape of the net without being too long to compromise the selectivity of the net. The separator ropes may not be manipulated in any way that would inhibit the selectivity of the net by causing the separator ropes to dip toward the bottom belly of the net and obscure the escape opening, as defined in paragraph (n)(3)(i)(A)(*3*) of this section.

(*3*) *Escape opening.* The escape opening must be positioned in the bottom belly of the net behind the sweep and terminate under the separator panel, as described in paragraph (n)(3)(i)(A)(*2*) of this section. Longitudinal lines may be used to maintain the shape of the escape opening, as necessary. The escape opening shall be at least 18 meshes in both length and width.

(B) [Reserved]

(ii) *Gillnet gear.* A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section using gillnet gear may only use roundfish gillnets or flatfish gillnets consistent with the gear requirements in § 648.80, provided the mesh size of the flatfish gillnet gear is greater than or equal to 10 inches (25.4 cm) throughout the entire net.

(iii) *Hook gear.* A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section using hook gear may only use longline gear, tub trawls, or handgear.

(iv) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the NE Multispecies Restricted Gear Areas in accordance with the standards and requirements specified in § 648.85(b)(6)(iv)(J)(*2*).

(4) *VMS declaration.* In addition to any other declaration requirements specified in this part, the operator of a limited access NE multispecies vessel intending to fish, or fishing, in one or both of the NE Multispecies Restricted Gear Areas, as specified in paragraphs (n)(1) and (2) of this section must declare into one or both of these areas via VMS, as instructed by the Regional Administrator, prior to departure from port. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish outside of the NE Multispecies Restricted Gear Areas for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the authorization letter on board.

(5) *Trip limits.* A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section must comply with the trip limits specified in § 648.86, unless further restricted by the following trip limits:

(i) If fishing exclusively under a NE multispecies DAS or under both a NE multispecies DAS and a monkfish DAS with gear other than gillnet gear, 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, yellowtail flounder, and Atlantic halibut), combined; 500 lb (227 kg) of monkfish (whole weight), unless also subject to the monkfish possession restrictions in § 648.94(b)(3); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters.

(ii) If fishing under both a NE multispecies DAS and a monkfish DAS with gillnet gear, 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, yellowtail flounder, and Atlantic halibut), combined; the applicable monkfish possession limits specified in § 648.94(b); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters.

(6) *Transiting.* A limited access NE multispecies vessel that is not subject to the restrictions of this paragraph (n) may transit the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section, provided any gear that is not authorized under paragraph (n)(3) of this section is stowed and not available for immediate use in accordance with § 648.23(b).

■ 10. In § 648.82:

■ (a) Revise the introductory text to paragraphs (d)(1), (d)(2)(i)(B), (d)(2)(ii)(B), (e)(1), (j), (j)(1), and (k)(4)(xi);

■ (b) Revise paragraphs (d)(1)(iii), (d)(2)(i)(B)(*3*), (d)(2)(ii)(B)(*3*), (e)(1)(ii), (e)(3), (g), (h), (j)(1)(ii) and (iii), (j)(2), (k)(2)(ii), (k)(4)(i), (k)(4)(v), (k)(4)(x), (k)(4)(xi)(B), (l)(1)(ii), (l)(1)(iv), (l)(1)(vi) through (viii), and (l)(2)(i);

■ (c) Remove and reserve paragraphs (c)(2), (e)(2), and (k)(4)(iv);

■ (d) Remove paragraphs (d)(4) and (l)(1)(ix); and

■ (e) Add paragraphs (d)(1)(iv), (d)(2)(i)(B)(*4*), (d)(2)(ii)(B)(*4*), (k)(4)(xi)(C), and (n) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(d) * * *

(1) *Category A DAS.* Calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iv) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land stocks of regulated species or ocean pout, in accordance with all of the conditions and restrictions of this part.

* * * * *

(iii) For fishing year 2009 (May 1, 2009, through April 30, 2010), Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(iv) Starting in fishing year 2010 (beginning May 1, 2010), Category A DAS are defined as follows:

(A) For a vessel fishing under the provisions of the common pool, as defined in this part, Category A DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section, or reduced pursuant to § 648.87(b)(1)(iii).

(B) For a sector vessel, Category A DAS allocated for use when fishing in other fisheries that require the concurrent use of a NE multispecies DAS are defined as 45 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(2) * * *

(i) * * *

(B) *Calculation.* Regular B DAS are calculated as follows:

* * * * *

(*3*) For fishing year 2009 (May 1, 2009, through April 30, 2010), Regular B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(*4*) Starting in fishing year 2010 (beginning May 1, 2010), Regular B DAS are defined as follows:

(*i*) For a common pool vessel, Regular B DAS are defined as 36.25 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section.

(*ii*) For a sector vessel, Regular B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(ii) * * *

(B) *Calculation.* Reserve B DAS are calculated as follows:

* * * * *

(*3*) For fishing year 2009 (May 1, 2009, through April 30, 2010), Reserve B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

(*4*) Starting in fishing year 2010 (beginning May 1, 2010), Reserve B DAS are defined as follows:

(*i*) For a common pool vessel, Reserve B DAS are defined as 36.25 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section, unless otherwise revised pursuant to paragraph (n)(1) of this section.

(*ii*) For a sector vessel, Reserve B DAS are defined as 27.5 percent of the vessel's used DAS baseline specified in paragraph (c)(1) of this section.

* * * * *

(e) * * *

(1) When a vessel is participating in the NE multispecies DAS program, as required by the regulations in this part, NE multispecies DAS shall accrue as specified in paragraphs (e)(1)(i) and (ii) of this section and shall be based upon the time called, or logged into the DAS program, consistent with the DAS notification requirements specified in § 648.10. For the purpose of calculating trip limits specified in this part, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally.

(i) [Reserved]

(ii) *Sector vessels.* For the purposes of complying with the restrictions of other fisheries that require the use of a NE multispecies DAS, a vessel on a sector trip shall accrue DAS to the nearest minute and shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified in § 648.10.

* * * * *

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on 1 calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can land legally. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in an area subject to differential DAS counting pursuant to paragraph (n)(1)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (n)(1) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS rules specified in § 648.10(e)(5)(iv).

* * * * *

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified in paragraphs (b)(5) or (b)(6) of this section, respectively, or a vessel issued an open access Handgear B permit, as specified in § 648.88(a), may not fish for, possess, or land regulated species or ocean pout from March 1 through March 20 of each year. A common pool vessel must declare out and be out of the NE multispecies DAS program, and a sector must declare that the vessel will not fish with gear capable of catching NE multispecies (i.e., gear that is not defined as exempted gear under this part), for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species, ocean pout, or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program; declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j) of this section; and declaration of its 20-day period out of the NE multispecies DAS program, or, for a sector vessel that the vessel will not fish with gear capable of catching NE multispecies, using the notification requirements specified in § 648.10.

* * * * *

(j) *Gillnet restrictions.* A vessel issued a limited access NE multispecies permit may fish under a NE multispecies DAS, under the provisions of the small vessel permit category, or on a sector trip with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* Unless otherwise exempted in this part, a Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS, the

provisions of a small vessel permit category, or on a sector trip is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, as appropriate, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

* * * * *

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, a Day gillnet vessel must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section shall be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies, ocean pout, or non-exempt species harvested with gillnet gear and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b) while fishing under a NE multispecies DAS, the provisions of the small vessel category permit, or on a sector trip from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable, unless otherwise exempt pursuant to § 648.87.

(B) Any such vessel shall declare its required time periods through the notification procedures specified in § 648.10(j)(2).

(C) During each period of time declared out, any such vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, under the provisions of the small vessel category permit, or on a sector trip, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS shall accrue DAS as follows:

(*1*) A Day gillnet vessel on a common pool trip is subject to the DAS accrual provisions of paragraph (e)(1)(i) of this section.

(*2*) A Day gillnet vessel on a sector trip is subject to the DAS accrual provisions of paragraph (e)(1)(ii) of this section.

* * * * *

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, under the provisions of the small vessel category permit, or on a sector trip, a Trip gillnet vessel is required to remove all gillnet gear from the water before returning to port upon the completion of a fishing trip and calling out of a NE multispecies DAS, as applicable, under § 648.10(e)(5) or (h)(5), respectively. When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized by § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(k) * * *

(2) * * *

(ii) Subject to the conditions and requirements of this part, DAS associated with a confirmation of permit history may be leased to another vessel without placing the permit on an active vessel.

* * * * *

(4) * * *

(i) *Confirmation of permit history.* Pursuant to paragraph (k)(2)(ii) of this section, DAS associated with a confirmation of permit history may be leased.

* * * * *

(v) *History of leased DAS use.* The history of leased DAS use shall be presumed to remain with the Lessor vessel. In the case of multiple leases to one vessel, the history of leased DAS use shall be presumed to remain with the Lessor in the order in which such leases were approved by NMFS. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS.

* * * * *

(x) *Leasing by vessels fishing under a sector allocation.* A sector vessel may not lease DAS to or from common pool vessels, but may lease DAS to or from another sector vessel during the fishing year in which the vessel is a member of a sector.

(xi) *One-time downgrade of DAS Leasing Program baseline.* Unless otherwise specified in paragraph (k)(4)(xi)(B) and (C) of this section, for the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (k)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

* * * * *

(B) *Applicability of the one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(E) and (F), or any other provision.

(C) *Duration of the one-time DAS Leasing Program baseline downgrade.* Unless otherwise specified in this paragraph (k)(4)(xi)(C) of this section, the downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement, or through a DAS transfer. With the exception of vessels combining DAS Leasing Program baselines from two different vessels through the DAS Transfer Program as outlined in paragraph (k)(4)(xi)(C)(2) of this section, once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit.

(*1*) *Vessel replacement.* If the permit is transferred to another vessel via a vessel replacement, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade.

(*2*) *DAS Transfer Program.* For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid. For vessels

involved in a DAS Transfer Program transaction where a combination of the transferor and transferee vessel baselines is adopted resulting in a new vessel baseline, any previous DAS Leasing Program baseline downgrade for either the transferor or transferee vessel will be voided and the transferee vessel would have an additional opportunity to downgrade its combined DAS Leasing Program baseline.

(l) * * *

(1) * * *

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded either its size (including LOA, GRT, and NT) or HP under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, provided such an upgrade is consistent with provisions of this paragraph (l)(1)(ii). A subsequent upgrade to another specification through a subsequent action (either a vessel replacement or DAS transfer) is not permissible. A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(C) of this section.

* * * * *

(iv) *DAS conservation tax.* Starting in fishing year 2010, any NE multispecies DAS transferred to another vessel under the DAS Transfer Program pursuant to paragraph (l) of this section are not subject to a DAS conservation tax specified in this paragraph (l)(1)(iv). Any DAS transferred under the DAS Transfer Program prior to fishing year 2010 that were reduced due to the DAS conservation tax specified in this paragraph (l)(1)(iv) may not be reinstated to the permit associated with the transferor vessel.

* * * * *

(vi) *Confirmation of permit history.* NE multispecies DAS associated with a Confirmation of Permit History may be transferred.

(vii) *Transfer by sector vessels.* A sector vessel may not transfer DAS to or from vessels that are fishing under the provisions of the common pool or another sector, but may transfer DAS to or from another vessel participating in that vessel's sector during the fishing year in which the vessel is a member of a particular sector.

(viii) Unless otherwise restricted by this part, a vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

* * * * *

(2) * * *

(i) *Application information requirements.* An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery.

* * * * *

(n) *NE multispecies common pool accountability measure (AM).* Common pool vessels are subject to the following AMs, in addition to the DAS accrual provisions specified in paragraph (e) of this section and other measures specified in this part.

(1) *Differential DAS counting AM for fishing years 2010 and 2011.* Unless otherwise specified pursuant to § 648.90(a)(5), based upon catch and other information available to NMFS by February of each year, the Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels for the fishing year ending on April 30 and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4). This projection shall be updated once available information regarding the catch of regulated species and ocean pout by vessels fishing for groundfish in state waters outside of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery to determine if excessive catch by such vessels resulted in the overall ACL for a particular stock to be exceeded. If such catch resulted in the overall ACL for a particular stock being exceeded, the common pool's share of the overage of the overall ACL for that stock shall be added to the catch of each stock of regulated species or ocean pout by common pool vessels pursuant to § 648.90(a)(5). If the Regional Administrator projects that any of the sub-ACLs specified for common pool vessels will be exceeded or underharvested, the Regional Administrator shall implement a differential DAS counting factor to all Category A DAS used within the stock area in which the sub-ACL was exceeded or underharvested, as specified in paragraph (n)(1)(i) of this section, during the following fishing year, in a manner consistent with the Administrative Procedure Act. The differential DAS counting factor shall be based upon the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified pursuant to § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod during fishing year 2010, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels only within the Inshore GOM Differential DAS Area during fishing year 2011 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch in a particular fishing year will exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, including both exceeding and underharvesting several sub-ACLs within a particular stock area, the Regional Administrator shall implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that common pool vessels will be responsible for 1.2 times the GOM cod sub-ACL and 1.1 times the CC/GOM yellowtail flounder sub-ACL, the Regional Administrator shall implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels only within the Inshore GOM Differential DAS Area during the following fishing year. For any differential DAS counting

factor implemented in fishing year 2011, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged). For any differential DAS counting factor implemented in fishing year 2012, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, or if a differential DAS counting factor was implemented for that stock area during fishing year 2011, against the DAS accrual rate applied in fishing year 2011. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011 due to a 20-percent overage of the GOM cod sub-ACL, yet the GOM cod sub-ACL was exceeded again, but by 50 percent during fishing year 2011, an additional differential DAS factor of 1.5 would be applied to the DAS accrual rate applied during fishing year 2012 (i.e., the DAS accrual rate in the Inshore GOM Differential DAS Counting Area during fishing year 2012 would be 43.2 hr charged for every 24-hr fished—1.2 × 1.5 × 24-hr DAS charge). If the Regional Administrator determines that similar DAS adjustments are necessary in all stock areas, the Regional Administrator will adjust the ratio of Category A:Category B DAS specified in paragraph (d)(1) of this section to reduce the number of available Category A DAS available based upon the amount of the overage, rather than apply a differential DAS counting factor to all Category A DAS used in all stock areas.

(i) *Differential DAS counting areas.* The following differential DAS counting areas shall be used for the purposes of implementing the differential DAS counting AM specified in paragraph (n)(1) of this section:

(A) *Inshore GOM Differential DAS Area.* The Inshore GOM Differential DAS Area applies to the following stocks of regulated species: White hake, pollock, GOM cod, GOM haddock, CC/GOM yellowtail flounder, GOM winter flounder, and Atlantic wolffish. The Inshore GOM Differential DAS Area is defined as the area bounded on the west by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

INSHORE GOM DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
INGOM1	(1)	69°30′
INGOM2	43°00′	69°30′
INGOM3	43°00′	70°00′
INGOM4	(2)	70°00′

1 Intersection with ME shoreline.
2 North-facing shoreline of Cape Cod, MA.

(B) *Offshore GOM Differential DAS Area.* The Offshore GOM Differential DAS Area applies to the following stocks of regulated species: GOM haddock, white hake, pollock, redfish, witch flounder, American plaice, and Atlantic halibut. The Offshore GOM Differential DAS Area is defined as the area bounded on the north by the shoreline of Maine, bounded on the east by the U.S./Canadian maritime boundary, and bounded on the south and west by straight lines connecting the following points in the order stated:

OFFSHORE GOM DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
CII3	42°22′	67°20′
OFFGOM1	42°20′	67°20′
OFFGOM2	42°20′	70°00′
OFFGOM5	43°00′	70°00′
INGOM2	43°00′	69°30′
INGOM1	(1)	69°30′

1 Intersection with ME shoreline.

(C) *Inshore GB Differential DAS Area.* The Inshore GB Differential DAS Area applies to the following stocks of regulated species: Witch flounder, American plaice, white hake, Atlantic halibut, redfish, pollock, CC/GOM yellowtail flounder, GB cod, GB haddock, SNE/MA winter flounder, and Atlantic wolffish. The Inshore GB Differential DAS Area is defined as the area bounded by straight lines connecting the following points in the order stated:

INSHORE GB DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
G9	(1)	70°00′
G10	42°20′	70°00′

INSHORE GB DIFFERENTIAL DAS AREA—Continued

Point	N. latitude	W. longitude
IGB1	42°20′	68°50′
IGB2	41°00′	68°50′
IGB3	41°00′	69°30′
IGB4	41°10′	69°30′
IGB5	41°10′	69°50′
IGB6	41°20′	69°50′
IGB7	41°20′	70°00′
G12	(2)	70°00′

1 The intersection of the Cape Cod, MA, coastline and 70°00′ W. longitude.
2 South-facing shoreline of Cape Cod, MA.

(D) *Offshore GB Differential DAS Area.* The Offshore GB Differential DAS Area applies to the following stocks of regulated species: Witch flounder, American plaice, Atlantic halibut, northern windowpane flounder, GB cod, GB haddock, GB yellowtail flounder, and GB winter flounder. The Offshore GB Differential DAS Area is defined as the area bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

OFFSHORE GB DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
IGB1	42°20′	68°50′
OGB1	42°20′	67°20′
CII3	(1)	67°20′
OGB2	40°10′	(1)
OGB3	40°10′	68°50′
IGB1	42°20′	68°50′

1 The U.S./Canada maritime boundary as it intersects with the EEZ.

(E) *SNE/MA Differential DAS Area.* The SNE/MA Differential DAS Area applies to the following stocks of regulated species or ocean pout: SNE/MA winter flounder, SNE/MA yellowtail flounder, southern windowpane flounder, and ocean pout. The SNE/MA Differential DAS Area is defined as the area bounded on the north and west by the coastline of the United States, bounded on the east and south by straight lines connecting the following points in the order stated:

SNE/MA DIFFERENTIAL DAS AREA

Point	N. latitude	W. longitude
G12	(1)	70°00′
IGB7	41°20′	70°00′
IGB6	41°20′	69°50′
IGB5	41°10′	69°50′
IGB4	41°10′	69°30′
IGB3	41°00′	69°30′
IGB2	41°00′	68°50′
SNEDA1	40°10′	68°50′
SNEDA2	40°10′	73°10′

SNE/MA DIFFERENTIAL DAS AREA—Continued

Point	N. latitude	W. longitude
SNEDA3	39°50′	73°10′
SNEDA4	39°50′	(2)

[1] South-facing shoreline of Cape Cod, MA.
[2] East-facing shoreline of NJ.

(ii) [Reserved]

(iii) *Mixed-stock exception.* When determining the differential DAS counting AM specified in this paragraph (n)(1), the Regional Administrator shall conduct an analysis to determine whether the mixed-stock exception, as specified in § 600.310(m), may be applicable. If the analysis concludes that the mixed-stock exception is applicable, the Regional Administrator shall modify or not apply a differential DAS counting AM on specific stocks, as appropriate, in accordance with the mixed-stock exception.

(iv) *Fishing year 2012.* Any adjustments to DAS counting necessary as a result of either underharvesting or overharvesting any of the sub-ACLs specified for common pool vessels during the 2011 fishing year pursuant to § 648.90(a)(4) shall become effective and remain effective for the duration of fishing year 2012 in addition to the implementation of the trimester TAC AM specified in paragraph (n)(2) of this section.

(2) *Trimester TAC AM for fishing years 2012 and beyond.* Beginning in fishing year 2012, common pool vessels shall be subject to the following restrictions:

(i) *Trimester TACs*–(A) *Trimester TAC distribution.* Any sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4) shall be apportioned into trimesters of four months in duration, beginning at the start of the fishing year (i.e., Trimester 1: May 1–August 31; Trimester 2: September 1–December 31; Trimester 3: January 1–April 30), as follows):

PORTION OF COMMON POOL SUB-ACLS APPORTIONED TO EACH STOCK FOR EACH TRIMESTER

Stock	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM Cod	27	36	37
GB Cod	25	37	38
GOM Haddock	27	26	47
GB Haddock	27	33	40
CC/GOM Yellowtail Flounder	35	35	30
GB Yellowtail Flounder	19	30	52
SNE/MA Yellowtail Flounder	21	37	42
GOM Winter Flounder	37	38	25
GB Winter Flounder	8	24	69
SNE/MA Winter Flounder	36	50	14
Witch Flounder	27	31	42
American Plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44
White Hake	38	31	31
Northern Windowpane Flounder	33	33	34
Southern Windowpane Flounder	33	33	34
Ocean Pout	33	33	34
Atlantic Halibut	33	33	34
Atlantic Wolffish	75	13	12

(B) *Trimester TAC adjustment.* The distribution of trimester TACs specified in paragraph (n)(2)(i)(A) of this section may be adjusted pursuant to the biennial adjustment process specified in § 648.90. Future adjustments to the distribution of trimester TACs shall use catch data for the most recent 5-year period prior to the reevaluation of trimester TACs.

(ii) *Stock area closures.* With the exception of both stocks of windowpane flounder, ocean pout, and Atlantic halibut, if the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred, according to available VTR data and other information, to all common pool vessels using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (P) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. For both stocks of windowpane flounder, ocean pout, and Atlantic halibut, the Regional Administrator shall monitor catch of these stocks and shall deduct any projected overages of the sub-ACLs for such stocks pursuant to paragraph (n)(2)(iii) of this section, instead of implementing a stock area closure when a Trimester TAC for any of these stocks is projected to be caught. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred.

(A) *GB Cod Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB COD TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	70°00′

GB COD TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
GB2	42°20′	(1)
GB3	40°30′	(1)
GB4	40°30′	66°40′
GB5	39°50′	66°40′
GB6	39°50′	68°50′
GB7	41°00′	68°50′
GB8	41°00′	69°30′
GB9	41°10′	69°30′
GB10	41°10′	69°50′
GB11	41°20′	69°50′
GB12	41°20′	(2)
GB13	(3)	70°00′
GB14	(4)	70°00′
GB15	(5)	70°00′
GB1	42°20′	70°00′

[1] U.S./Canada maritime boundary.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Cape Cod, MA.
[5] North-facing shoreline of Cape Cod, MA.

(B) *GOM Cod Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Cod Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM COD TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GOM1	(1)	69°20′
GOM2	43°40′	69°20′
GOM3	43°40′	69°00′
GOM4	43°20′	69°00′
GOM5	43°20′	69°10′
GOM6	43°00′	69°10′
GOM7	43°00′	69°20′
GOM8	42°50′	69°20′
GOM9	42°50′	69°40′
GOM10	42°20′	69°40′
GOM11	42°20′	70°00′
GOM12	(2)	70°00′

[1] Intersection with ME shoreline.
[2] North-facing shoreline of Cape Cod, MA.

(C) *GB Haddock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Haddock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

GB HADDOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	70°00′
GB2	42°20′	(1)
GB3	40°30′	(1)
GB4	40°30′	66°40′
GB5	39°50′	66°40′
GB6	39°50′	68°50′
GB7	41°00′	68°50′
GB8	41°00′	69°30′
GB9	41°10′	69°30′
GB10	41°10′	69°50′
GB11	41°20′	69°50′
GB12	41°20′	(2)
GB13	(3)	70°00′
GB14	(4)	70°00′
GB15	(5)	70°00′
GB1	42°20′	70°00′

[1] U.S./Canada maritime boundary.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Cape Cod, MA.
[5] North-facing shoreline of Cape Cod, MA.

(D) *GOM Haddock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Haddock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded on the south, west, and north by the shoreline of the United States and bounded on the east by straight lines connecting the following points in the order stated:

GOM HADDOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GOM1	(1)	69°20′
GOM2	43°40′	69°20′
GOM3	43°40′	69°00′
GOM4	43°20′	69°00′
GOM5	43°20′	67°40′
GOM6	(2)	67°40′
GOM7	42°53.1′	67°44.4′
GOM8	(2)	67°40′
GOM9	42°20′	67°40′
GOM10	42°20′	70°00′
GOM12	(3)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] North-facing shoreline of Cape Cod, MA.

(E) *GB Yellowtail Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

GB YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	68°50′
GB2	42°20′	(1)
GB3	40°30′	(1)
GB4	40°30′	66°40′
GB5	39°50′	66°40′
GB6	39°50′	68°50′
GB1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(F) *SNE/MA Yellowtail Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the SNE/MA Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
SNEMA1	(1)	70°00′
SNEMA2	(2)	70°00′
SNEMA3	(3)	70°00′
SNEMA4	39°50′	70°00′
SNEMA5	39°50′	71°40′
SNEMA6	40°00′	71°40′
SNEMA7	40°00′	73°00′
SNEMA8	(4)	73°00′
SNEMA9	41°00′	(5)
SNEMA10	41°00′	71°40′
SNEMA11	(6)	71°40′

[1] South-facing shoreline of Cape Cod, MA.
[2] North-facing shoreline of Nantucket, MA.
[3] South-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Long Island, NY.
[5] East-facing shoreline of Long Island, NY.
[6] Intersection with RI shoreline.

(G) *CC/GOM Yellowtail Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the CC/GOM Yellowtail Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
CCGOM1	42°50’	(1)
CCGOM2	42°50′	69°40′
CCGOM3	42°20′	69°40′
CCGOM4	42°20′	68°50′
CCGOM5	41°00′	68°50′
CCGOM6	41°00′	69°30′
CCGOM7	41°10′	69°30′

CC/GOM YELLOWTAIL FLOUNDER TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
CCGOM8	41°10′	69°50′
CCGOM9	41°20′	69°50′
CCGOM10	41°20′	(2)
CCGOM11	(3)	70°00′
CCGOM12	(4)	70°00′

1 Intersection with MA shoreline.
2 East-facing shoreline of Nantucket, MA.
3 North-facing shoreline of Nantucket, MA.
4 South-facing shoreline of MA.

(H) *American Plaice Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the American Plaice Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

AMERICAN PLAICE TRIMESTER TAC AREA

Point	N. latitude	W. longitude
AP1	(1)	68°00′
AP2	44°10′	67°50′
AP3	44°00′	67°50′
AP4	44°00′	67°40′
AP5	(2)	67°40′
AP6	42°53.1′	67°44.4′
AP7	(2)	67°40′
AP8	41°20′	67°40′
AP9	41°10′	67°40′
AP10	41°10′	67°10′
AP11	41°00′	67°10′
AP12	41°00′	67°00′
AP13	40°50′	67°00′
AP14	40°50′	66°50′
AP15	40°40′	66°50′
AP16	40°40′	66°40′
AP17	39°50′	66°40′
AP18	39°50′	68°50′
AP19	41°00′	68°50′
AP20	41°00′	69°30′
AP21	41°10′	69°30′
AP22	41°10′	69°50′
AP23	41°20′	69°50′
AP24	41°20′	(3)
AP25	(4)	70°00′
AP26	(5)	70°00′

1 Intersection with ME shoreline.
2 U.S./Canada maritime boundary.
3 East-facing shoreline of Nantucket, MA.
4 North-facing shoreline of Nantucket, MA.
5 South-facing shoreline of Cape Cod, MA.

(I) *Witch Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Witch Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

WITCH FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
AP1	(1)	68°00′
AP2	44°10′	67°50′
AP3	44°00′	67°50′
AP4	44°00′	67°40′
AP5	(2)	67°40′
AP6	42°53.1′	67°44.4′
AP7	(2)	67°40′
AP8	41°20′	67°40′
AP9	41°10′	67°40′
AP10	41°10′	67°10′
AP11	41°00′	67°10′
AP12	41°00′	67°00′
AP13	40°50′	67°00′
AP14	40°50′	66°50′
AP15	40°40′	66°50′
AP16	40°40′	66°40′
AP17	39°50′	66°40′
AP18	39°50′	68°50′
AP19	41°00′	68°50′
AP20	41°00′	69°30′
AP21	41°10′	69°30′
AP22	41°10′	69°50′
AP23	41°20′	69°50′
AP24	41°20′	(3)
AP25	(4)	70°00′
AP26	(5)	70°00′

1 Intersection with ME shoreline.
2 U.S./Canada maritime boundary.
3 East-facing shoreline of Nantucket, MA.
4 North-facing shoreline of Nantucket, MA.
5 South-facing shoreline of Cape Cod, MA.

(J) *GB Winter Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GB Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

GB WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GB1	42°20′	68°50′
GB2	42°20′	67°40′
GB3	41°50′	67°40′
GB4	41°50′	(1)
GB5	40°30′	(1)
GB6	40°30′	66°40′
GB7	40°40′	66°40′
GB8	40°40′	66°50′
GB9	40°50′	66°50′
GB10	40°50′	67°00′
GB11	41°00′	67°00′
GB12	41°00′	67°10′
GB13	41°10′	67°10′
GB14	41°10′	67°40′
GB15	41°20′	67°40′
GB16	41°20′	68°10′
GB17	41°10′	68°10′
GB18	41°10′	68°20′
GB19	41°00′	68°20′
GB20	41°00′	68°50′
GB1	42°20′	68°50′

1 U.S./Canada maritime boundary.

(K) *GOM Winter Flounder Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the GOM Winter Flounder Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER TRIMESTER TAC AREA

Point	N. latitude	W. longitude
GOM1	42°50′	(1)
GOM2	42°50′	69°40′
GOM3	42°20′	69°40′
GOM4	42°20′	70°00′
GOM5	(2)	70°00′

1 Intersection with MA shoreline
2 North-facing shoreline of Cape Cod, MA

(L) *SNE/MA Winter Flounder Trimester TAC AM Closure Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the SNE/MA Winter Flounder Trimester TAC Areas I and II shall apply to common pool vessels using trawl gear. The SNE/MA Winter Flounder Trimester TAC Area I is bounded by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER TRIMESTER TAC AREA I

Point	N. latitude	W. longitude
1	42°20′	70°00′
2	42°20′	68°50′
3	41°00′	68°50′
4	41°00′	69°30′
5	41°10′	69°30′
6	41°10′	69°50′
7	41°20′	69°50′
8	41°20′	(1)
9	(2)	70°00′
10	(3)	70°00′
11	(4)	70°00′

1 East-facing shoreline of Nantucket, MA.
2 North-facing shoreline of Nantucket, MA.
3 South-facing shoreline of Cape Cod, MA.
4 North-facing shoreline of Cape Cod, MA.

SNE/MA Winter Flounder Trimester TAC Area II is bound on the west by the U.S. coastline, defined by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER TRIMESTER TAC AREA II

Point	N. latitude	W. longitude
SNE/MA12	(1)	71°10′
SNE/MA13	41°20′	71°10′
SNE/MA14	41°20′	(2)
SNE/MA15	41°20′	(3)

SNE/MA WINTER FLOUNDER TRIMESTER TAC AREA II—Continued

Point	N. latitude	W. longitude
SNE/MA16	41°20′	(4)
SNE/MA17	(5)	70°00′
SNE/MA18	39°50′	70°00′
SNE/MA19	39°50′	71°40′
SNE/MA20	40°00′	71°40′
SNE/MA21	40°00′	(6)

[1] Intersection with RI shoreline.
[2] West-facing shoreline of Martha's Vineyard, MA.
[3] East-facing shoreline of Martha's Vineyard, MA.
[4] West-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Nantucket, MA.
[6] Intersection with NJ shoreline.

(M) *Redfish Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Redfish Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

REDFISH TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(N) *White Hake Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

WHITE HAKE TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′

WHITE HAKE TRIMESTER TAC AREA—Continued

Point	N. latitude	W. longitude
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(O) *Pollock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Pollock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

POLLOCK TRIMESTER TAC AREA

Point	N. latitude	W. longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(P) *Atlantic Wolffish Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Atlantic Wolffish Trimester TAC Area shall apply to common pool vessels using trawl gear and sink gillnet gear within the area bounded by straight lines connecting the following points in the order stated:

ATLANTIC WOLFFISH TRIMESTER TAC AREA

Point	N. latitude	W. longitude
ATWLF1	(1)	69°20′
ATWLF2	43°40′	69°20′
ATWLF3	43°40′	69°00′
ATWLF4	43°20′	69°00′
ATWLF5	43°20′	69°10′
ATWLF6	43°00′	69°10′
ATWLF7	43°00′	69°20′
ATWLF8	42°50′	69°20′
ATWLF9	42°50′	69°40′
ATWLF10	42°20′	69°40′
ATWLF11	42°20′	67°40′
ATWLF12	41°20′	67°40′
ATWLF13	41°20′	68°10′
ATWLF14	41°10′	68°10′
ATWLF15	41°10′	68°20′
ATWLF16	41°00′	68°20′
ATWLF17	41°00′	69°30′
ATWLF18	41°10′	69°30′
ATWLF19	41°10′	69°50′
ATWLF20	41°20′	69°50′
ATWLF21	41°20′	(2)
ATWLF22	(3)	70°00′
ATWLF23	(4)	70°00′

[1] Intersection with ME shoreline.
[2] East-facing shoreline of Nantucket, MA.
[3] North-facing shoreline of Nantucket, MA.
[4] South-facing shoreline of Cape Cod, MA.

(iii) *Trimester TAC overage/underage.* If any trimester TAC, as specified in paragraph (n)(2)(i) of this section, is not caught during Trimester 1 or 2, the uncaught portion of the trimester TAC shall be carried forward into the next trimester. Uncaught portions of any trimester TAC following Trimester 3 may not be carried over into the following fishing year. If any trimester TAC is exceeded during the Trimesters 1 or 2, the overage shall be deducted from the Trimester 3 TAC for that stock. If the entire sub-ACL for a particular stock that is allocated to the common pool is exceeded (i.e., the common pool catch of that stock at the end of the fishing year, including the common pool's share of any overage of the overall ACL for a particular stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), exceeds all three trimester TACs for that stock combined), an amount equal to the overage shall be deducted from the sub-ACL for that stock that is allocated to common pool vessels pursuant to § 648.90(a)(4) for the following fishing year.

(iv) *Monitoring requirements.* Starting in fishing year 2012 (May 1, 2012), landings of regulated species or ocean

pout by common pool vessels shall be monitored at the point of offload by independent, third-part service providers approved/certified to provide such services by NMFS, as specified in paragraphs (n)(2)(iv)(A) and (B) of this section. These service providers shall deploy dockside monitors to monitor the offload of catch directly to a dealer and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. The costs associated with monitoring vessel offloads shall be the responsibility of individual vessels and an individual vessel may only use one dockside monitoring service provider per fishing year. Both common pool vessels and service providers providing offloading monitoring services will be subject to the requirements specified in § 648.87(b)(5).

(A) *Coverage levels.* At least 20 percent of the trips taken by vessels operating under the provisions of the common pool shall be monitored. To ensure that this level of coverage is achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip must be monitored by a dockside/roving monitor, as specified in paragraph (n)(2) of this section. For example, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during offload at each location. All landing events at remote ports that are selected to be observed by a dockside/roving monitor will be required to have a roving monitor present to witness offload activities to the truck, as well as a dockside monitor present at each dealer to certify weigh-out of all landings. Any service provider providing dockside/monitoring services required under this paragraph (n)(2)(iv) must ensure that coverage is randomly distributed among all such trips and that the landing events monitored are representative of fishing operations by common pool vessels throughout the fishing year, unless otherwise directed.

(B) *Dockside/roving monitor service provider standards.* For fishing year 2012 and beyond, a common pool vessel must employ a service provider approved/certified by NMFS to provide dockside/roving monitor services, as identified by the Regional Administrator. To be approved/certified to provide the services specified in paragraph (n)(2) of this section, dockside/roving monitor service providers must meet the standards listed in § 648.87(b)(4).

(v) *Adjustments to trimester TACs.* The distribution of trimester TACs specified in paragraph (n)(2)(i) of this section may be revised pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2) and shall use the distribution of landings of the most recent 5-year period available.

(vi) *Trip limit adjustment.* When 60 percent of the northern or southern windowpane flounder, ocean pout, or Atlantic halibut sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4)(iii)(E)(*2*) is projected to be caught, the Regional Administrator may specify a possession limit for these stocks that is calculated to prevent the yearly sub-ACL from being exceeded prior to the end of the fishing year.

■ 11. In § 648.83, revise paragraph (a)(1) to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Size (inches)
Cod	22 (55.9 cm)
Haddock	18 (45.7 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

■ 12. In § 648.85:

■ a. Revise the introductory text to paragraph (a)(1), (a)(3), (a)(3)(iii), (b)(8)(v)(A);

■ b. Revise paragraphs (a)(2), (a)(3)(i) and (ii), (a)(3)(iv) and (v), (a)(3)(vii), (b)(3) through (5), (b)(6)(iv)(D) through (F), (b)(6)(iv)(H) and (I), (b)(6)(iv)(J)(*1*), (b)(6)(v), (b)(7), (b)(8)(i), (b)(8)(v)(A)(*2*) through (*4*), (b)(8)(v)(B), (b)(8)(v)(D), (b)(8)(v)(E)(*1*) and (*3*), (b)(8)(v)(F), (b)(8)(v)(H) and (I), and (d); and

■ c. Add paragraphs (b)(6)(iv)(J)(*4*) and (e) to read as follows:

§ 648.85 Special management programs.

* * * * *

(a) * * *

(1) *U.S./Canada Management Areas.* A vessel issued a NE multispecies permit that meets the requirements of paragraph (a)(3) of this section may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

* * * * *

(2) *TAC allocation*—(i) *Process for establishing TACs.* The amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (D) of this section.

(A) To the extent practicable, by June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock, and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) To the extent practicable, by July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) To the extent practicable, by August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock, and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) To the extent practicable, by October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock, and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year as a subset of the ACLs for these stocks available to the commercial fishery pursuant to § 648.90(a)(4). NMFS shall review the Council's recommendations and shall publish the proposed TACs in the **Federal Register** and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and publish notification of the approved TACs and responses to public comments in the **Federal Register.** The Council, at this time, may also consider

modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(ii) *Adjustments to TACs.* Any overages of the GB cod and GB haddock TACs specified for either the common pool or individual sectors, or any overages of the GB yellowtail flounder TAC specified for the common pool, individual sectors, or the scallop fishery pursuant to this paragraph (a)(2) that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

(iii) *Distribution of TACs.* For stocks managed by the U.S./Canada Resource Sharing Understanding, as specified in paragraph (a)(1) of this section, the TAC allocation determined pursuant to this paragraph (a)(2) shall be distributed between sectors approved pursuant to § 648.87(c), common pool vessels, and scallop vessels, as specified in § 648.90(a)(4). Approved sectors will be allocated ACE for Eastern GB cod and Eastern GB haddock proportional to the sector's allocation of the overall ACL for these stocks, based upon the fishing histories of sector vessels, as specified in § 648.87(b)(1)(i). Any ACE for Eastern GB cod and Eastern GB haddock allocated to an individual sector is considered a subset of the overall GB cod and GB haddock ACE allocated to that sector and may only be harvested from the Eastern U.S./Canada Area, while the remaining ACE for GB cod and GB haddock available to that sector may only be harvested outside of the Eastern U.S./Canada Area. For example, if a sector is allocated 10 percent of the GB haddock ACL, it will also be allocated 10 percent of the Eastern GB haddock TAC for that particular fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas.* Any common pool or sector vessel, provided the sector to which a vessel belongs is allocated ACE for stocks caught in the Eastern U.S./Canada Area pursuant to paragraph (a)(2)(iii) of this section and § 648.87(b)(1)(i), may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. A vessel other than a NE multispecies vessel may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies vessel fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(ii) *Declaration.* To fish in the U.S./Canada Management Area under a NE multispecies DAS or on a sector trip, a NE multispecies vessel must declare through the VMS the specific area within the U.S./Canada Management Areas, as described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP within the U.S./Canada Management Areas, as described in paragraph (b) of this section, the vessel will be fishing in prior to leaving the dock, in accordance with instructions to be provided by the Regional Administrator, and must comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies vessels are not required to declare into the U.S./Canada Management Areas.

(A) A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished for the entire trip, and the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. A vessel on a sector trip may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*3*) of this section. When a vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on that trip shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(*1*) The vessel operator must notify NMFS via VMS prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area, as instructed by the Regional Administrator. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS and vessels on a sector trip that are not fishing under a NE multispecies DAS for the purposes of complying with the restrictions of other fisheries, once a vessel elects to fish outside of the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS Demarcation Line at the start of its fishing trip until the time the vessel crosses the VMS Demarcation Line on its return to port, in accordance with § 648.10(e)(5)(iii).

(*2*) Unless otherwise exempted pursuant to this part, the vessel must comply with the reporting requirements of the U.S./Canada Management Area specified in § 648.85(a)(3)(v) for the duration of the trip.

(*3*) [Reserved]

(*4*) If a common pool vessel fishing under a NE multispecies DAS possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (i.e., may not fish outside of the U.S./Canada Management Area).

(B) A common pool vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive regulations applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(*4*) of this section), and the reporting requirements specified in § 648.85(a)(3)(v). A vessel on a sector trip in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive reporting requirements specified in § 648.85(a)(3)(v), unless otherwise exempted pursuant to this part.

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 48 hr prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* A NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (8) of this section, must fish with a Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(*1*) of this section, or a haddock separator trawl, or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (all three nets may be onboard the fishing vessel simultaneously). Unless otherwise

restricted by § 648.80(n), gear other than the Ruhle trawl, haddock separator trawl, or the flounder trawl net, or gear authorized under paragraphs (b)(6) and (8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations in § 648.23(b). The description of the haddock separator trawl and the flounder trawl net, and the description of the Ruhle trawl may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register,** in a manner consistent with the Administrative Procedure Act.

* * * * *

(iv) *Harvest controls.* Unless otherwise specified in this paragraph (a)(3)(iv), any NE multispecies vessel fishing in the U.S./Canada Management Areas is subject to the following restrictions. For common pool vessels, the trip limits specified in this paragraph (a)(3)(iv) are in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas. A sector vessel is subject to the trip limits specified in § 648.87(b)(1)(ix).

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a common pool vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs, as required under this section.

(*1*) *Initial cod landing limit.* Unless modified pursuant to paragraph (a)(3)(iv)(D) of this section, notwithstanding other applicable possession and landing restrictions under this part, a common pool vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs, as required under this section.

(*2*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to NE multispecies DAS vessels as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit all vessels from harvesting, possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(B) *Haddock landing limit*—(*1*) *Initial haddock landing limit.* The initial haddock landing limit for common pool vessels is specified in § 648.86(a), unless adjusted pursuant to paragraphs (a)(3)(iv)(B)(*2*) and (*3*) of this section.

(*2*) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the haddock TAC allocation specified for common pool vessels, as described in paragraph (a)(2) of this section, will be harvested, NMFS shall implement, in a manner consistent with the Administrative Procedure Act, a haddock trip limit for common pool vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock distributed to either common pool vessels or a particular sector, as specified in paragraph (a)(2) of this section, will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit such vessels and all other vessels not issued a limited access NE multispecies permit from harvesting, possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit*—(*1*) *Initial yellowtail flounder landing limit.* Unless further restricted under paragraphs (a)(3)(iv)(C)(*2*) or (D) of this section (gear performance incentives), or modified pursuant to paragraph (a)(3)(iv)(D) of this section, there is no initial limit to the amount of yellowtail flounder that could be landed for each fishing year.

(*2*) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC, or to facilitate harvesting the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC, in a manner consistent with the Administrative Procedure Act. The Regional Administrator may specify yellowtail flounder trip limits that apply to the entire U.S./Canada Management Area or to only the Western or Eastern Area.

(*3*) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder distributed to either common pool vessels or a particular sector, as specified in paragraph (a)(2) of this section, will be harvested, NMFS shall, in a manner consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to all limited access NE multispecies vessels subject to that particular TAC allocation, as specified in paragraph (a)(3)(iv)(E) of this section, and prohibit such vessels and all other vessels not issued a limited access NE multispecies permit from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(*4*) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

(D) *Other restrictions or inseason adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or to facilitate achieving the TAC specified in paragraph (a)(2) of this section. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement

different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg) (whole weight) each (*i.e.,* no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

(E) *Closure of Eastern U.S./Canada Area.* Based upon available information, when the Regional Administrator projects that any individual TAC allocation specified in paragraph (a)(2)(iii) of this section will be caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all vessels subject to that particular TAC allocation, unless otherwise allowed under this paragraph (a)(3)(iv)(E). For example, if the Eastern GB cod TAC specified for common pool vessels is projected to be caught, NMFS shall close the Eastern U.S./Canada Area to all common pool vessels operating under a NE multispecies DAS. Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), common pool vessels fishing under a DAS may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP (i.e., haddock for the Eastern U.S./Canada Haddock SAP or haddock or yellowtail flounder for the CA II Yellowtail Flounder/Haddock SAP) has not been fully harvested. A vessel fishing on a sector trip may only fish in a SAP if that vessel's sector has ACE available for all stocks caught in that SAP. For example, should the GB cod TAC allocation specified for common pool vessels in paragraph (a)(2)(iii) of this section be attained, and the Eastern U.S./Canada Area closure implemented for common pool vessels, common pool vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder/Haddock SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting.* The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. A vessel fishing on a sector trip is subject to the reporting requirements specified in this paragraph (a)(3)(v) unless the Regional Administrator determines that weekly sector catch reports, as required by § 648.87(b)(1)(v), are sufficient to monitor sector catch within the U.S./Canada Management Areas, and the Regional Administrator makes that determination in a manner consistent with the Administrative Procedure Act. Vessels subject to this reporting requirement must continue to report daily, even after exiting the U.S./Canada Management Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(A) VTR serial number or other universal ID specified by the Regional Administrator;

(B) Date fish were caught and statistical area in which fish were caught; and

(C) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, ocean pout, Atlantic wolffish, and white hake kept (in pounds, live weight) in each broad stock area, specified in § 648.10(k)(3), as instructed by the Regional Administrator.

* * * * *

(vii) *Transiting.* A NE multispecies vessel that has declared into the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, and that is not fishing in the CA II Yellowtail Flounder/Haddock SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations in § 648.23(b).

* * * * *

(b) * * *

(3) *Closed Area II Yellowtail Flounder/Haddock SAP*—(i) *Eligibility.* Any vessel issued a valid limited access NE multispecies permit fishing under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks that may be caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), are eligible to participate in the Closed Area II Yellowtail Flounder/Haddock SAP, and may fish in the Closed Area II Yellowtail Flounder/Haddock Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, provided the Eastern U.S./Canada Area, as described in paragraph (a)(1)(ii) of this section, is not closed according to the provisions specified in paragraph (a)(3)(iv)(E) of this section, or that the sector to which a vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i). All eligible vessels must comply with the requirements of this section, unless otherwise specified in this paragraph (b)(3).

(ii) *Closed Area II Yellowtail Flounder/Haddock SAP Area.* The Closed Area II Yellowtail Flounder/Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL FLOUNDER/HADDOCK SAP AREA

Point	N. latitude	W. longitude
Ytail 1	41°30′	67°20′
Ytail 2	41°30′	66°34.8′
G5	41°18.6′	66°24.8′1
CII 2	41°00′	66°35.8′
CII 1	41°00′	67°20′
Ytail 1	41°30′	67°20′

(iii) *Season*—(A) *Season when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the Closed Area II Yellowtail Flounder/Haddock SAP from July 1 through December 31.

(B) *Season when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock.* When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as specified in paragraph (b)(3)(vii) of this section, eligible vessels may fish in the CA II Yellowtail Flounder/Haddock SAP from August 1 through January 31.

(iv) *VMS requirement.* All NE multispecies vessels fishing in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum

performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; date, time and port of departure; and special access program to be fished, at least 48 hr prior to the beginning of any trip that it declares into the SAP as required under this paragraph (b)(3)(v). To fish in the Closed Area II Yellowtail Flounder/Haddock SAP, a vessel must declare into this area through the VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Closed Area II Yellowtail Flounder/Haddock SAP may also fish in the area outside the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, on the same trip, provided the vessel also declares into this area prior to departure from port and fishes under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements for the areas fished during the entire trip.

(vi) *Number of trips per vessel*—(A) *Number of trips allowed when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, eligible common pool vessels are restricted to one trip per calendar month during the season described in paragraph (b)(3)(iii) of this section.

(B) *Number of trips allowed when the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock.* When the CA II Yellowtail Flounder/Haddock SAP is open only to target haddock, as specified in paragraph (b)(3)(vii) of this section, there is no limit on the number of trips that can be taken by eligible vessels during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Opening criteria*—(A) *Opening the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder.* Unless otherwise authorized by the Regional Administrator, as specified in paragraph (a)(3)(iv)(D) of this section, the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP for each fishing year shall be as announced by the Regional Administrator on or about June 1, after consultation with the Council, in a manner consistent with the Administrative Procedure Act. Except as provided in paragraph (b)(3)(vii)(B) of this section, the total number of trips by all common pool vessels that may be declared into this SAP when the SAP is open to target yellowtail flounder shall not exceed 320 per year. When determining the total number of trips, the Regional Administrator shall consider the available yellowtail flounder TAC under the U.S./Canada Resource Sharing Understanding, the potential catch of GB yellowtail flounder by all vessels fishing outside of the SAP, recent discard estimates in all fisheries that catch yellowtail flounder, the expected number of SAP participants, and any other available information. If the Regional Administrator determines that the available catch, as determined by subtracting the potential catch of GB yellowtail flounder by all vessels outside of the SAP from the GB yellowtail flounder TAC allocation specified in paragraph (a)(2) of this section, is insufficient to allow for at least 150 trips with a possession limit of 15,000 lb (6,804 kg) of yellowtail flounder per trip, the Regional Administrator may choose not to authorize any trips into the SAP during a fishing year.

(B) *Opening the CA II Yellowtail/Haddock SAP to only target haddock.* If the CA II Yellowtail Flounder/Haddock SAP is not open to targeting yellowtail flounder due to an insufficient amount of yellowtail flounder TAC, or because the maximum number of trips allowed into the CA II Yellowtail Flounder/Haddock SAP to target yellowtail flounder has been achieved pursuant to paragraph (b)(3)(vii)(A) of this section, eligible vessels may target haddock in the CA II Yellowtail Flounder/Haddock Access Area, as specified in paragraph (b)(3)(ii) of this section, provided the Eastern GB haddock TAC specified in paragraph (a)(2) of this section has not been caught, the Eastern U.S./Canada Area is not closed pursuant to paragraph (a)(3)(iv)(D) of this section; and, for vessels on a sector trip, the sector to which the sector vessel belongs has ACE remaining for the stocks caught in the Eastern U.S./Canada Area.

(viii) *Trip limits.* Vessels subject to the provisions of the common pool that are fishing in the Closed Area II Yellowtail Flounder/Haddock SAP are subject to the following trip limits, unless otherwise restricted in this part. Vessels subject to the restrictions and conditions of an approved sector operations plan fishing in the Closed Area II Yellowtail Flounder/Haddock SAP are subject to the trip limits specified in § 648.87(b)(1)(ix).

(A) *Yellowtail flounder trip limit*—(*1*) *Trip limits when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, when the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, a vessel subject to the provisions of the common pool that is fishing in the CA II Yellowtail Flounder/Haddock SAP may fish for, possess, and land up to 10,000 lb (4,536 kg) of yellowtail flounder per trip. The Regional Administrator may adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (b)(3)(vii) of this section for the maximum number of trips.

(*2*) *Trip limits when the CA II Yellowtail Flounder/Haddock SAP is open to target haddock.* Unless otherwise specified by the Regional Administrator pursuant to paragraph (a)(3)(iv)(D) of this section, when the CA II Yellowtail Flounder/Haddock SAP is only open to target haddock, as specified in paragraph (b)(3)(vii) of this section, the trip limit for yellowtail flounder is specified in paragraph (b)(3)(viii)(C) of this section.

(B) *Cod and haddock trip limit.* Unless otherwise restricted, a common pool vessel fishing any portion of a trip in the Closed Area II Yellowtail Flounder/Haddock SAP on a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A common pool vessel fishing on a NE multispecies DAS in the Closed Area II Yellowtail Flounder/Haddock SAP is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

(C) *Other species trip limits.* A common pool vessel fishing on a NE multispecies DAS in the CA II Yellowtail Flounder/Haddock SAP using a haddock separator trawl, a Ruhle trawl, or any other gear specified pursuant to paragraph (b)(3)(x)(B) must comply with the trip limits specified in § 648.86, unless further restricted by the trip limits specified in paragraph (e) of this section.

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder/Haddock SAP, and other areas as specified in paragraph (b)(3)(v) of this section, may not fish for, possess, or land fish in or from outside of the declared area during the same trip.

(x) *Gear requirements*—(A) *Approved gear.* When the CA II Yellowtail Flounder/Haddock SAP is open to target yellowtail flounder, as specified in paragraph (b)(3)(vii) of this section, NE multispecies vessels must fish with a haddock separator trawl or a flounder trawl net, as described in paragraph (a)(3)(iii) of this section, or the Ruhle trawl, as described in paragraph (b)(6)(iv)(J)(*3*) of this section (all three nets may be onboard the fishing vessel simultaneously). When this SAP is only open to target haddock, NE multispecies vessels must use a haddock separator trawl, a Ruhle trawl, or hook gear. Gear other than the haddock separator trawl, the flounder trawl, or the Ruhle trawl may be on board the vessel during a trip to the Eastern U.S./Canada Area outside of the CA II Yellowtail Flounder/Haddock SAP, provided the gear is stowed according to the regulations at § 648.23(b).

(B) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the CA II Yellowtail Flounder/Haddock SAP in accordance with the standards and requirements specified in paragraph (b)(6)(iv)(J)(*2*) of this section.

(xi) *No-discard provision and DAS flips.* A vessel fishing in the CA II Yellowtail Flounder/Haddock SAP under a NE multispecies DAS or on a sector trip may not discard legal-sized regulated NE multispecies, unless the possession of the species is prohibited pursuant to § 648.86, or unless otherwise specified in this paragraph (b)(3)(xi). A vessel may discard Atlantic halibut exceeding the one fish per trip possession limit. If a vessel fishing in the CA II Yellowtail Flounder/Haddock SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a common pool vessel operator fishing in the CA II Yellowtail Flounder/Haddock SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies or Atlantic halibut than the maximum landing limits allowed per trip, as specified in paragraph (b)(3)(iv) or (viii) of this section, or in § 648.86, the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (i.e., either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Category B DAS.

(xii) *Minimum Category A DAS.* For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(xiii) *Catch distribution.* All catch of GB haddock from vessels declared into the CA II Yellowtail Flounder/Haddock SAP shall be applied against the Eastern GB haddock TAC, as specified in paragraph (a)(2) of this section, for either common pool vessels or individual approved sectors.

(4) [Reserved]

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, witch flounder, and pollock. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for these stocks shall be based upon the portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, GB winter flounder, and pollock.* With the exception of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod and pollock.* Each of the Incidental Catch TACs for GB cod and pollock specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder.* Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section and 50 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(6) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), or restricted pursuant to § 648.86, a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod (both GOM and GB), American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, and pollock; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified in paragraph (a)(3)(iii)(A), or a Ruhle trawl, as specified in paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described in paragraph (b)(6)(iv)(J) of this section, are restricted to the trip limits specified in paragraph (e) of this section.

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, ocean pout, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of regulated species or ocean pout is prohibited, as specified in §§ 648.85 and 648.86. If such a vessel harvests and brings on board legal-sized regulated species or ocean pout in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits

specified in § 648.85(a) or § 648.86 and may discard fish in excess of the applicable trip limits.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip. If a vessel is fishing in an area subject to differential DAS counting pursuant to § 648.82(n)(1), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by the applicable differential DAS counting factor specified in § 648.82(n)(1)(ii). For example, if a vessel plans a trip under the Regular B DAS Program in the Inshore GOM Differential DAS Area during a fishing year in which the area is subject to a differential DAS counting factor of 1.2, and the vessel has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 8 (10 divided by 1.2 = 8.33, but since Regular B DAS are charged in 24-hr intervals, 8 Regular B DAS is the maximum that can be used for this trip). A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(1).

* * * * *

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May–July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(1).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2359 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; statistical area fished; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, and white hake kept in each broad stock area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described in paragraph (b)(6)(iv)(E) of this section.

(J) * * *

(*1*) Vessels fishing with trawl gear in the Regular B DAS Program must use the haddock separator trawl or Ruhle trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or other type of gear if approved as described in this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program pursuant to § 648.23(b).

* * * * *

(*4*) *Mesh size.* An eligible vessel fishing in the Regular B DAS Program pursuant to paragraph (b)(6) of this section must use trawl gear described in this paragraph (b)(6)(iv)(J) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

(v) *Definition of stock areas.* The species stock areas associated with the incidental catch TACs for the Regular B DAS Program are defined in paragraphs (b)(6)(v)(A) through (K) of this section. Where specified, these areas also identify stock areas applicable for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of ACE pursuant to § 648.87(b). Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) [Reserved]

(B) [Reserved]

(C) *CC/GOM yellowtail flounder stock area.* For the purposes of the Regular B DAS Program, the CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
CCGOM 1	43°00′	(1)
CCGOM 2	43°00′	70°00′
CCGOM 3	42°30′	70°00′
CCGOM 4	42°30′	69°30′

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. latitude	W. longitude
CCGOM 5	41°30′	69°30′
CCGOM 6	41°30′	69°00′
CCGOM 7	41°00′	69°00′
CCGOM 8	41°00′	69°30′
CCGOM 5	41°30′	69°30′
CCGOM 9	41°30′	70°00′
CCGOM 10	(2)	70°00′
CCGOM 11	42°00′	70°00′
CCGOM 12	42°00′	(3)
CCGOM 13	42°00′	(4)
CCGOM 14	42°00′	(5)

[1] Intersection with the NH coastline.
[2] Intersection of the south-facing shoreline of Cape Cod, MA.
[3] Intersection with the east-facing shoreline of Cape Cod, MA.
[4] Intersection with the west-facing shoreline of Cape Cod, MA.
[5] Intersection with the east-facing shoreline of Massachusetts.

(D) [Reserved]

(E) *SNE/MA yellowtail flounder stock area.* For the purposes of the Regular B DAS Program, the SNE/MA stock area is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
SNEMA1	40°00′	74°00′
SNEMA2	40°00′	72°00′
SNEMA3	40°30′	72°00′
SNEMA4	40°30′	69°30′
SNEMA5	41°10′	69°30′
SNEMA6	41°10′	69°50′
SNEMA7	41°20′	69°50′
SNEMA8	41°20′	(1)
SNEMA9	(2)	70°00′
SNEMA10	41°00′	70°00′
SNEMA11	41°00′	70°30′
SNEMA12	(3)	70°30′
SNEMA13	(4)	72°00′
SNEMA14	(5)	72°00′
SNEMA15	(6)	73°00′
SNEMA16	40°30′	73°00′
SNEMA17	40°30′	74°00′
SNEMA1	40°00′	74°00′

[1] East-facing shoreline of Nantucket, MA.
[2] South-facing shoreline of Nantucket, MA.
[3] Intersection of the south-facing shoreline of Cape Cod, MA.
[4] South-facing shoreline of CT.
[5] North-facing shoreline of Long Island, NY.
[6] South-facing shoreline of Long Island, NY.

(F)–(I) [Reserved]

(J) *White hake stock area.* The white hake stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded

on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00′ N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

* * * * *

(7) *CA I Hook Gear Haddock SAP*—

(i) *Eligibility.* A vessel issued a valid limited access NE multispecies permit operating under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the CA I Hook Gear Haddock SAP and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided any such vessel complies with the requirements of this section, the SAP is not closed according to the provisions specified in paragraph (b)(7)(iv)(H) or (b)(7)(vi)(F) of this section, or the sector in which the vessel is participating no longer has ACE available for all stocks caught within the CA I Hook Gear Haddock Access Area pursuant to § 648.87(b)(1)(i). Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock SAP Area.* The CA I Hook Gear Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

CA I HOOK GEAR HADDOCK SAP AREA

Point	N. latitude	W. longitude
Hook 1	41°09′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′
Hook 2	41°04′	69°01.1′

(iii) *Season.* The season for the CA I Hook Gear Haddock SAP is May 1 through January 31.

(iv) *General program restrictions.* General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels, as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to sector and common pool vessels are specified in paragraphs (b)(7)(v) and (vi) of this section, respectively.

(A) *DAS use restrictions.* A vessel fishing in the Closed Area I Hook Gear Haddock SAP under a NE multispecies DAS may not initiate a DAS flip. A vessel is prohibited from fishing in the Closed Area I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described in paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *VMS requirement.* An eligible NE multispecies vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 48 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* To fish in the CA I Hook Gear Haddock SAP prior to departure from port, a vessel must declare into the SAP via VMS, and, for a vessel fishing under a NE multispecies DAS, indicate the type of DAS that it intends to fish, prior to departure from port, as instructed by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP may fish only in the CA I Hook Gear Haddock Special Access Area described in paragraph (b)(7)(ii) of this section on a declared trip.

(E) *Gear restrictions.* A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified in paragraph (b)(7)(v)(A) of this section. Such vessels are prohibited from using as bait, or possessing on board, squid or mackerel during a trip into the CA I Hook Gear Haddock SAP.

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear Haddock SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: BiomassYEAR X = (1,130 mt live weight) × (Projected WGB Haddock ExploitableBiomassYEAR X/WGB Haddock Exploitable Biomass2004). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act.

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP. A vessel operating under a NE multispecies DAS must end the trip if the vessel exceeds the applicable landing limits described in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section.

(H) *Landing limits.* For all vessels legally declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies are specified in paragraphs (b)(7)(v)(B) and (b)(7)(vi)(C) of this section, respectively. Unless otherwise specified in this part, such vessels are prohibited from discarding legal-sized regulated species and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator determines that the haddock TAC specified in paragraph (b)(7)(iv)(F) of this section has been caught, NMFS shall close, in a manner consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock SAP Area as specified in paragraph (b)(7)(ii) of this section, to all eligible vessels, including both common pool and sector vessels.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a sector vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(v).

(A) *Gear restrictions.* A sector vessel is subject to the gear requirements of the sector Operations Plan as approved under § 648.87(c) and those specified under paragraph (b)(7)(iv)(E) of this section.

(B) *Landing limits.* A sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the landing limits for regulated species in effect under the sector's Operations Plan, as approved under § 648.87(c).

(C) *Reporting requirements.* The owner or operator of a sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the sector Manager, consistent with instructions to be provided by the sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The

sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, ocean pout, Atlantic halibut, Atlantic wolffish, and white hake discarded; date fish were caught; and VTR serial numbers for each trip declared into the CA I Hook Gear Haddock SAP, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) or (H) of this section.

(D) *Incidental catch TACs.* There are no incidental catch TACs specified for regulated species or ocean pout for sector vessels declared into the CA I Hook Gear Haddock SAP. All regulated species or ocean pout caught by sector vessels fishing in the SAP count toward the sector's annual ACE for each stock, as specified in § 648.87(b)(1)(i).

(vi) *Common pool vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, a common pool vessel declared into the CA I Hook Gear Haddock SAP is also required to comply with the restrictions specified in this paragraph (b)(7)(vi).

(A) *DAS use restrictions.* A common pool vessel may only use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A common pool vessel is prohibited from using Category A DAS and may not initiate a DAS flip when declared into the SAP. A common pool vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

(B) *Gear restrictions.* A common pool vessel is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v), but must comply with the gear restrictions in paragraph (b)(7)(iv)(E) of this section.

(C) *Landing limits.* A common pool vessel may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A common pool vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements.* The owner or operator of a common pool vessel must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2359 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: VTR serial number or other universal ID specified by the Regional Administrator; date fish were caught; statistical area fished; and the total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, American plaice, redfish, Atlantic halibut, and white hake kept in each broad stock area (in pounds, live weight), specified in § 648.10(k)(3), as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

(E) *Incidental catch TACs.* The maximum amount of GB cod and pollock (landings and discards) that may be cumulatively caught by a common pool vessel from the CA I Hook Gear Haddock SAP Area in a fishing year is the amount specified in paragraph (b)(5)(ii) of this section.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of any incidental catch TAC.* When the Regional Administrator determines that either the GB cod or pollock incidental catch TAC specified in paragraph (b)(7)(vi)(E) of this section has been caught, the CA I Hook Gear Haddock SAP Area shall be closed to all common pool vessels in a manner consistent with the Administrative Procedure Act.

(8) * * *

(i) *Eligibility.* A vessel issued a valid limited access NE multispecies permit and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section while operating under a NE multispecies DAS or on a sector trip, provided the sector to which the vessel belongs has been allocated ACE for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i), is eligible to participate in the Eastern U.S./Canada Haddock SAP and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessel complies with the requirements of this section and provided the SAP is not closed according to the provisions specified in paragraph (b)(8)(v)(K) or (L) of this section, the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section, or the sector to which the vessel belongs no longer has ACE available for all stocks caught within the Eastern U.S./Canada Area pursuant to § 648.87(b)(1)(i).

* * * * *

(v) * * *

(A) *Area and DAS use restrictions.* A common pool vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP may elect to fish under a Category A or Category B DAS in accordance with § 648.82(d)(2), or in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A). A vessel on a sector trip in the Eastern U.S./Canada Haddock SAP may elect to fish in multiple areas in accordance with the restrictions of this paragraph (b)(8)(v)(A).

* * * * *

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8)(i) of this section may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the Closed Area II Yellowtail Flounder/Haddock SAP Area, as described in paragraph (b)(3)(ii) of this section, and, for common pool vessels fishing a NE multispecies DAS, while under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder/Haddock SAP Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided a common pool vessel fishes under a Category A DAS and all eligible vessels comply with the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(*4*) A common pool vessel fishing under a NE multispecies DAS that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting requirements specified in § 648.10(e)(5), trip limits, and reporting requirements of the areas fished for the entire trip. A vessel on a sector trip that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must comply with the most restrictive reporting requirements of the areas fished for the entire trip, unless otherwise specified by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(B) *VMS requirement.* A vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

* * * * *

(D) *VMS declaration.* To fish in the Eastern U.S./Canada Haddock SAP, a vessel issued a limited access NE multispecies permit must declare into the SAP via VMS and provide information on the areas within the Eastern U.S./Canada Area that it intends to fish and the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, if operating under the provisions of the common pool, prior to departure from port, in accordance with paragraph (b)(8)(v)(A) of this section and any instructions provided by the Regional Administrator.

(E) * * *

(*1*) Unless otherwise specified in this paragraph (b)(8)(v)(E)(1), a vessel issued a limited access NE multispecies permit fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl or the Ruhle Trawl, as described in paragraphs (a)(3)(iii)(A) and (b)(6)(iv)(J)(*3*) of this section, respectively, or another type of gear, if approved as described in this paragraph (b)(8)(v)(E). A vessel on a sector trip in the Eastern U.S./Canada Haddock SAP is not restricted to only using the haddock separator trawl or the Ruhle trawl, but may use any gear authorized in paragraph (a)(3)(iii) of this section, unless otherwise restricted by a sector operations plan approved pursuant to § 648.87(c). Other gear may be on board the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, provided that the gear is stowed in accordance with § 648.23(b).

* * * * *

(*3*) *Mesh size.* A vessel eligible to fish in the Eastern U.S./Canada Haddock SAP pursuant to paragraph (b)(8) of this section must use trawl gear described in this paragraph (b)(8)(v)(E) with a minimum codend mesh size of 6-inch (15.24-cm) square or diamond mesh.

(F) *Landing limits.* Unless otherwise restricted under this part, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a NE multispecies DAS is subject to the haddock requirements described in § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A common pool vessel fishing in the Eastern U.S./Canada Haddock SAP may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight) and skates (whole weight) is limited to 500 lb (227 kg) each, unless otherwise restricted by § 648.94(b)(3), and possession of lobsters is prohibited.

* * * * *

(H) *Incidental TACs.* The maximum amount of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A), is the amount specified in paragraphs (b)(5)(ii) and (iii) of this section. All regulated species and ocean pout caught by a vessel on a sector trip will be applied against the ACE for each stock that is specified for the sector in which the vessel participates.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated or ocean pout unless otherwise required due to a prohibition of the possession of such species specified in this part. If a common pool vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified in paragraph (b)(8)(v)(F) of this section, or in § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is subject to all applicable landing limits specified in § 648.85(a) or § 648.86. If a common pool vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified in paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined in paragraph (b)(8)(ii) of this section for the remainder of the trip. For a common pool vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS pursuant to § 648.82(e)(1), and not Category B DAS.

* * * * *

(d) *Incidental catch allowance for some limited access herring vessels.* The incidental catch allowance for all vessels that have an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit is 0.2 percent of the combined ACLs for GOM haddock and GB haddock (U.S. landings only) specified according to § 648.90(a)(4) for a particular NE multispecies fishing year.

(e) *Authorized gear performance standards.* Unless otherwise restricted in this part, in areas and times when a special management program, as specified in this section, requires the use of gear authorized by that program to reduce catches of stocks of concern, participating vessels are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

■ 13. In § 648.86, revise the introductory text to this section; revise paragraphs (a)(2)(iii), (b)(2) through (4), (e), (g), and (j); and add paragraphs (l), and (m) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

Except as provided in § 648.17 or elsewhere in this part, the following possession restrictions apply:

(a) * * *

(2) * * *

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels also issued limited access NE multispecies permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(b) * * *

(2) *GB cod landing and maximum possession limits.* Unless otherwise restricted under § 648.85, a vessel

fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 2,000 lb (907.2 kg) of cod per DAS, or part of a DAS, up to 20,000 lb (9,072 kg) provided it complies with the requirements specified in paragraph (b)(4) of this section and this paragraph (b)(2). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) [Reserved]

(4) *Exemption.* A common pool vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the GOM Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration.* With the exception of a vessel declared into the U.S./Canada Management Area, as described in § 648.85(a)(3)(ii), a common pool vessel that fishes or intends to fish under a NE multispecies DAS south of the line described in paragraph (b)(4) of this section, under the cod trip limits described in paragraph (b)(2) of this section, must, prior to leaving port, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the letter of authorization on board.

(ii) A common pool vessel exempt from the GOM cod landing limit pursuant to paragraph (b)(4)(i) of this section may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

* * * * *

(e) *White hake.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions is not restricted in the amount of white hake the vessel may land per trip during fishing years 2010 and 2011. Starting in fishing year 2012, unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 2,000 lb (907.2 kg) per trip.

* * * * *

(g) *Yellowtail flounder*—(1) *CC/GOM and SNE/MA yellowtail flounder landing limit.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined in § 648.85(a)(1), may land or possess on board up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,500 lb (680.4 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g) or § 648.85(a)(3)(iv)(C)).

(2) *GB yellowtail flounder landing limit.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is subject to the GB yellowtail flounder limit described in paragraph § 648.85(a)(3)(iv)(c).

* * * * *

(j) *GB winter flounder.* Unless otherwise restricted under this part, a common pool vessel fishing under a NE multispecies DAS, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions and fishing in the U.S./Canada Management Area defined in § 648.85(a)(1) is not restricted in the amount of GB winter flounder the vessel may land per trip.

* * * * *

(l) *Ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land ocean pout, windowpane flounder, or Atlantic wolffish. In addition, such vessels may not fish for, possess, or land winter flounder caught in or from the SNE/MA winter flounder stock area, as defined in § 648.85(b)(6)(v)(F). Vessels may transit this area with GOM or GB winter flounder on board the vessel, provided that gear is stowed in accordance with the provisions of § 648.23(b).

(m) *Additional possession restrictions*—

(1) [Reserved]

(2) *Possession limits for vessels fishing in multiple areas.* If a vessel fishes in more than one stock area on the same trip, as defined in § 648.85(b)(6)(v) or § 648.87(b)(1)(ii), the most restrictive trip limit for a species applies for the entire trip.

■ 14. Revise § 648.87 to read as follows:

§ 648.87 Sector allocation.

(a) *Procedure for approving/implementing a sector allocation proposal.* (1) Any person may submit a sector allocation proposal for a group of limited access NE multispecies vessels to the Council and request that the sector be implemented through either a biennial adjustment or framework adjustment, as specified in § 648.90(a)(2), as long as it is submitted at least 1 year prior to the date the sector wants to begin operations in accordance with the conditions and restrictions of this section. The sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed sector, in compliance with the National Environmental Policy Act.

(2) Upon receipt of a sector allocation proposal, the Council must decide whether to initiate a management action to implement the sector proposal. Should a biennial adjustment or framework adjustment to authorize a sector allocation proposal be initiated, the Council will follow the framework adjustment provisions of § 648.90(a)(2). Any biennial adjustment or framework adjustment developed to implement a sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section.

(3) *Eligibility.* Any valid limited access NE multispecies permit, including a Handgear A permit and those permits held in confirmation of permit history pursuant to § 648.4(a)(1)(i)(J) as of May 1, 2008, is eligible to join a NE multispecies sector, provided the permit complies with the restrictions specified in this section. Any valid limited access Category A or B monkfish permit may be eligible to join a NE multispecies sector, as described in this section, pursuant to any measures adopted by a future revision to the Monkfish FMP by both the New England and Mid-Atlantic Fishery Management Councils. Vessels that do not join a sector remain subject to the NE multispecies regulations for common pool vessels.

(4) *Minimum size.* To be authorized to operate as a sector under this section, a sector must be comprised of at least three NE multispecies permits issued to at least three different persons, none of whom have any common ownership interests in the permits, vessels, or businesses associated with the permits issued the other two or more persons in that sector. Having an ownership interest in a permit includes, but is not limited to, persons or entities who are shareholders, officers, or partners in a corporation owning a permit; who are partners (general or limited) to a permit owner; who, in any way, partly own a permit; or who derive any financial benefit, or exercises any control over, another permit. As long as at least three persons issued a NE multispecies permit meet these requirements, permit owners may have common ownership interests in other permits, vessels, or businesses associated with such permits.

(b) *General requirements applicable to all approved Sectors.* (1) All sectors approved under the provisions of paragraph (a) of this section must submit the documents specified in paragraphs (a)(1), (b)(2), and (b)(3) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) *TAC allocation*—(A) *Allocated stocks.* Each sector shall be allocated a TAC in the form of an ACE for each NE multispecies stock with the exception of Atlantic halibut, SNE/MA winter flounder, ocean pout, windowpane flounder (both the GOM/GB and the SNE/MA stocks), and Atlantic wolffish based upon the cumulative PSCs of vessels participating in each sector during a particular fishing year, as described in paragraph (b)(1)(i)(E) of this section. In the event that a future allocation of SNE/MA winter flounder can be made available pursuant to the biennial adjustment or framework process specified in § 648.90(a)(2), an ACE for this stock will be specified pursuant to paragraph (b)(1)(i)(E)(*1*) of this section.

(B) *Eastern GB stocks.* Each sector allocated ACE for stocks managed under the terms of the U.S./Canada Resource Sharing Understanding in the Eastern U.S./Canada Area, as specified in § 648.85(a), shall be allocated a specific portion of the ACE for such stocks that can only be harvested from the Eastern U.S./Canada Area, as specified in § 648.85(a)(1). The ACE specified for the Eastern U.S./Canada Area portions of these stocks shall be proportional to the sector's allocation of the overall ACL available to all vessels issued a limited access NE multispecies permit for these stocks pursuant to § 648.90(a)(4). For example, if a sector is allocated 10 percent of the GB cod ACL available to all vessels issued a limited access NE multispecies permit, that sector would also be allocated and may harvest 10 percent of that ACE from the Eastern U.S./Canada Area. In this example, if the overall GB cod ACL available to all vessels issued a limited access NE multispecies permit is 1,000 mt, of which 100 mt is specified to the Eastern U.S./Canada Area, the Sector would be allocated 100 mt of GB cod, of which no more than 10 mt could be harvested from the Eastern U.S./Canada Area and no more than 90 mt could be harvested from the rest of the GB cod stock area.

(C) *Carry-over.* With the exception of GB yellowtail flounder, a sector may carry over up to 10 percent of unused ACE for each stock into the following fishing year. Any unused ACE allocated for Eastern GB stocks pursuant to paragraph (b)(1)(i)(B) of this section will contribute to the 10-percent carry-over allowance for each stock, as specified in this paragraph (b)(1)(i)(C), but will not increase an individual sector's allocation of Eastern GB stocks during the following year. This carry-over ACE remains effective during the subsequent fishing year even if vessels that contributed to the sector allocation during the previous fishing year are no longer participating in the same sector for the subsequent fishing year.

(D) *Maximum ACE allocation.* There is no maximum amount of ACE that can be allocated to a particular sector during each fishing year.

(E) *Potential sector contribution (PSC).* For the purposes of allocating a share of the available ACL for each NE multispecies stock to approved sectors pursuant to § 648.90(a)(4), the landings history of all limited access NE multispecies permits shall be evaluated to determine each permit's share of the overall landings for each NE multispecies stock as specified in paragraphs (b)(1)(i)(E)(*1*) and (*2*) of this section. When calculating an individual permit's share of the overall landings for a particular regulated species or ocean pout stock, landed weight shall be converted to live weight to maintain consistency with the way ACLs are calculated pursuant to § 648.90(a)(4) and the way ACEs are allocated to sectors pursuant to this paragraph (b)(1)(i). The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.

(*1*) *Calculation of PSC for all NE multispecies stocks except GB cod.* Unless otherwise specified in paragraph (b)(1)(i)(E)(*2*) of this section, for each valid limited access NE multispecies permit, including limited access NE multispecies Handgear A permits, dealer landings of each stock of NE multispecies caught while operating under the restrictions associated with a limited access NE multispecies permit, including regulated species or ocean pout caught under a NE multispecies DAS when participating in the skate or monkfish fisheries, that are available in the commercial dealer database to NMFS shall be summed for fishing years 1996 through 2006. This value shall then be divided by the total landings of each NE multispecies stock during the same period by all permits eligible to join sectors as of May 1, 2008. This produces an individual permit's share of the ACL for each regulated species or ocean pout stock available to the NE multispecies fishery. The landings history for each permit includes all landings that can be attributed to that permit pursuant to this paragraph (b)(1)(i)(E). For limited access NE multispecies Handgear A permits, this includes landings by the permitted vessel during fishing years 1996 through 2003 before the adoption of the limited access Handgear A permit category in 2004.

(*2*) *Calculation of GB cod PSC.* The GB cod PSC shall be calculated as specified in this paragraph (b)(1)(i)(E)(*2*) and shall remain with the permit indefinitely regardless whether the vessel participates in either the GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector, as defined in § 648.87(d)(1) or (2), joins a new sector, or fishes pursuant to the provisions of the common pool.

(*i*) *GB cod PSC for permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector.* For each valid NE multispecies permit that committed to participate in either the

GB Cod Hook Gear Sector or the GB Cod Fixed Gear Sector as evidenced by a valid signature executed on or before March 1, 2008, on a preliminary roster for either of these sectors, the PSC for GB cod shall be based upon the sum of dealer landings of GB cod for fishing years 1996 through 2001, divided by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period. The PSC for all other regulated species or ocean pout stocks specified for these permits shall be calculated pursuant to paragraph (b)(1)(i)(E)(*1*) of this section.

(*ii*) *GB cod PSC for all other permits.* For all NE multispecies permits that have not committed to participate in either the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector, as specified in paragraph (o)(2)(i) of this section, the GB cod PSC shall be based upon the GB cod PSC available after accounting for the GB cod PSC calculated pursuant to paragraph (o)(2)(i) of this section. First, each permit's individual share of the available GB cod PSC shall be calculated by dividing the sum of the individual permit's landings of GB cod available in the commercial dealer database for fishing years 1996 through 2006 by the total landings of GB cod by permits eligible to join sectors as of May 1, 2008, during that period, after subtracting the total landings of GB cod by permits that committed to participate in either the GB Cod Hook Sector or GB Cod Fixed Gear Sector as of March 1, 2008, during that period. This individual share shall then multiplied by the available GB cod PSC calculated by subtracting the GB cod PSC allocated pursuant to paragraph (b)(1)(i)(E)(*2*)(*i*) of this section from one. This shall provide each vessel's share of the available GB cod PSC.

(ii) *Areas that can be fished.* Vessels in a sector may only fish in a particular stock area, as specified in paragraphs (b)(1)(ii)(A) through (F) of this section, and § 648.85(b)(6)(v), or the Eastern U.S./Canada Area, as specified in § 648.85(a)(1), if the sector has been allocated, or acquires pursuant to paragraph (b)(1)(viii) of this section, ACE for all stocks caught in that stock area. A sector must project when its ACE for each stock will be exceeded and must ensure that all vessels in the sector cease fishing operations prior to exceeding it. Once a sector has harvested its ACE for a stock, all vessels in that sector must cease fishing operations in that stock area on a sector trip unless and until it acquires additional ACE from another sector pursuant to paragraph (b)(1)(viii) of this section, or as otherwise specified in an approved operations plan pursuant to paragraph (b)(2)(xiv) of this section. For the purposes of this paragraph (b)(1)(ii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular sector that exceed the ACE allocated to that sector, as of the date received or purchased by the dealer, whichever occurs first, after considering all ACE transfer requests ultimately approved by NMFS during the current fishing year, pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to § 648.90(a)(5).

(A–F) [Reserved]

(iii) *Sector AMs.* At the end of the fishing year, NMFS shall evaluate sector catch using VTR, VMS, IVR, and any other available information to determine whether a sector has exceeded any of its ACE allocations based upon the cumulative catch by participating permits/vessels, as identified in the final operations plan approved by the Regional Administrator pursuant to paragraph (c) of this section, and each sector's share of any overage of the overall ACL for any stock caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5), if necessary. Should an ACE allocated to a sector be exceeded in a given fishing year, the sector's ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year, and the sector, each vessel, vessel operator and/or vessel owner participating in the sector may be charged, as a result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If an ACE allocated to a sector is not exceeded in a given fishing year pursuant to this paragraph (b)(1)(iii), the sector's ACE allocation shall not be reduced for the following fishing year as a result of an overage of an ACE by non-compliant sectors or an overage of sub-ACLs allocated to common pool vessels, but may be reduced if the excessive catch of a particular stock by other sub-components of the fishery causes the overall ACL of a particular stock to be exceeded pursuant to § 648.90(a)(5). If declining stock conditions result in a need to reduce fishing mortality, and all sectors and common pool vessels have operated within their ACE or sub-ACL limits, a sector's percentage share shall not be changed, but the amount this share represents may be reduced due to reduced overall ACL for a particular stock. If stock conditions improve, and certain sectors stay within their ACE while other sectors or the common pool exceed their respective ACEs or sub-ACLs, the sectors that stay within their ACEs shall receive a temporary increase in ACE equal to the amount that other sectors or the common pool exceeded their ACE or sub-ACL, divided among such sectors proportional to each sector's share of the ACL available to vessels issued a limited access NE multispecies permit.

(A) *Overage penalty if there is sufficient ACE to cover the overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but has sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of participating vessels during the fishing year following the overage, no overage penalty shall be applied to any member permit/vessel that leaves that sector to fish under the provisions of the common pool or in another sector in the year following the overage. Any impacts to departing member permits/vessels may be specified and addressed by the sector operations plan and associated sector contract.

(B) *Overage penalty if there is insufficient ACE to cover an overage.* If a sector exceeds an ACE allocated to it during the previous fishing year, but disbands in the year following the overage, or otherwise does not have sufficient ACE to address the overage pursuant to this paragraph (b)(1)(iii) based upon the cumulative PSCs of permits/vessels participating in that sector during the fishing year following the overage, individual permit holders that participated in the sector during the fishing year in which the overage occurred shall be responsible for reducing their DAS/PSC to account for that overage in the subsequent fishing year, as follows:

(*1*) *PSC reduction.* If a sector disbands following an overage, and the owner of an individual permit joins another sector for the subsequent fishing year, that permit's contribution toward the ACE for the stock for which the overage occurred to the other sector in the subsequent fishing year shall be reduced by an amount equal to the overage divided by the number of permits/vessels participating in the sector during the fishing year in which the overage occurred. For example, if a sector comprised of 10 permits/vessels exceeded its GB cod ACE by 10,000 lb (4,536 kg) during the previous fishing year, but later disbands, each permit/vessel that was in that sector, but then joins another sector during the following fishing year shall have its contribution of GB cod to another sector temporarily reduced by 1,000 lb (453.6 kg) during the subsequent fishing year for the purposes of calculating the available GB cod ACE allocated to another sector during that fishing year.

(*2*) *DAS reduction.* If a sector disbands following an overage and the owner of an individual permit elects to fish under the provisions of the common pool during the subsequent fishing year, that permit/vessel's NE multispecies Category A DAS allocation for the subsequent fishing year shall be temporarily reduced by an amount proportional to the highest percentage overage by that sector of any of the stocks for which an overage occurred. For example, if a sector exceeded its GB cod ACE by 10 percent and its pollock ACE by 15 percent, each permit would receive a 15-percent reduction in its Category A DAS allocation for the subsequent fishing year if fishing under the provisions of the common pool.

(*3*) *Fishing prohibition.* If a sector does not disband following an overage, but otherwise does not have sufficient ACE to cover an overage based upon the PSC of participating permits, that sector's ACE for the stock for which the overage occurred shall be temporarily reduced to zero for the following fishing year, and that sector shall be prohibited from fishing on a sector trip in the stock area associated with the stock for which the ACE was exceeded during the following year, unless and until that sector can acquire sufficient ACE from another sector to cover the remaining overage from the previous fishing year. For example, if a sector comprised of 10 permits/vessels was allocated 10 mt of GB cod ACE, but caught 25 mt during the previous fishing year (i.e., it exceeded its GB cod ACE by 15 mt), each permit/vessel that participating in that sector during the following fishing year would have its GB cod PSC temporarily reduced to zero during the subsequent fishing year, and that sector would not be able to fish on a sector trip in the GB cod stock area until it could acquire at least an additional 5 mt of GB cod ACE from another sector (i.e., 15 mt overage—10 mt ACE for the following year = 5 mt overage remaining).

(C) *ACE buffer.* At the beginning of each fishing year, NMFS shall withhold 20 percent of a sector's ACE for each stock for a period of up to 61 days (i.e., through June 30) to allow time to process any ACE transfers submitted by May 15 pursuant to paragraph (b)(1)(viii) of this section and to determine whether the ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to individual permits/vessels in the current fishing year to accommodate an ACE overage by that sector during the previous fishing year, as specified in paragraph (b)(1)(iii) of this section.

(iv) *Sector enforcement*—(A) *Sector compliance and joint/several liability.* Unless exempted through a letter of authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a sector must also comply with all applicable requirements and conditions of the operations plan specified in paragraph (b)(2) of this section and the letter of authorization issued pursuant to paragraph (c)(2) of this section. Pursuant to 15 CFR part 904, each sector, permit/vessel owner, and vessel operator participating in the sector may be charged jointly and severally for violations of the following sector operations plan requirements, which may result in an assessment of civil penalties and permit sanctions: ACE overages, discarding of legal-sized NE multispecies, and misreporting of catch, including both landings and discards. For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors, as specified in this paragraph (b)(1)(iv).

(B) *Commitment to a sector.* A permit/vessel participating in a sector must remain in the sector for the remainder of the fishing year. Such permits/vessels cannot fish under both the sector provisions and the provisions of the common pool during that same fishing year for any reason, including, but not limited to, expulsion from the sector pursuant to enforcement actions or other measures specified in an approved sector operations plan, vessel replacement, or permit/vessel sale to another owner. For example, if a permit/vessel is sold by a sector participant during the fishing year, the new owner must comply with the sector regulations and the conditions of the sector operations plan, sector contract, or any other binding agreements among participating sector vessels for the remainder of the fishing year. If a permit/vessel has been expelled from a sector, the sector must notify NMFS of such an expulsion immediately. Any permit/vessel, vessel operator, or vessel owner removed from a sector during a specific fishing year consistent with sector rules shall not be eligible to fish in another sector or under the NE multispecies regulations for common pool vessels specified in this part for the remainder of that fishing year. For the purposes of this paragraph, "permit/vessel" refers to the fishing and landings history associated with a particular permit/vessel enrolled in a specific sector at the start of the fishing year that was used to calculate the PSC for that permit/vessel and contribute to the ACE for each stock allocated to that specific sector.

(v) *Sector monitoring.* Each sector shall monitor catch by participating sector vessels to ensure that ACEs are not exceeded during the fishing year, as specified in this paragraph (b)(1)(v). The sector shall summarize trips validated by dealer reports; oversee the use of electronic monitoring equipment and review of associated data; maintain a database of VTR, dealer, observer, and electronic monitoring reports; determine all species landings by stock areas; apply discard estimates to landings; deduct catch from ACEs allocated to sectors; and report sector catch on a weekly basis to NMFS, as required in paragraph (b)(1)(vi) of this section. Unless otherwise specified in this paragraph (b)(1)(v), all catches of stocks allocated to sectors by vessels on a sector trip shall be deducted from the sector's ACE for each NE multispecies stock regardless of what the fishery the vessel was participating in when the fish was caught. For the purposes of this paragraph (b)(1)(v), any regulated species or ocean pout caught using gear capable of catching NE multispecies (i.e., gear not listed as exempted gear under this part) would be deducted from a sector's ACE if such catch contributed to the specification of PSC, as described in § 648.87(b)(1)(i)(E), and would not apply to another ACL sub-component pursuant to § 648.90(a)(4). For example, any regulated species or ocean pout landed while fishing for or catching skates or monkfish pursuant to the regulations for those fisheries would be deducted from the sector's ACE for each stock because such regulated species or ocean pout were caught while also operating under a NE multispecies DAS. However, if a sector vessel is issued a limited access General Category Atlantic Sea Scallop permit and fishes for scallops under the provisions specific to that permit, any yellowtail flounder caught by the vessel on such trips would be deducted from the other sub-component of the appropriate stock of yellowtail flounder's ACL specified for the Atlantic Sea Scallop fishery and not from the yellowtail flounder ACE for the sector.

(A) *Discards.* A sector vessel may not discard any legal-sized regulated species or ocean pout allocated to sectors pursuant to paragraph (b)(1)(i) of this section, unless otherwise required pursuant to § 648.86(l). Discards of undersized regulated species or ocean pout by a sector vessel must be reported

to NMFS consistent with the reporting requirements specified in paragraph (b)(1)(vi) of this section. Discards shall not be included in the information used to calculate a vessel's PSC, as described in § 648.87(b)(1)(i)(E), but shall be counted against a sector's ACE for each NE multispecies stock allocated to a sector.

(B) *Independent third-party monitoring program.* Beginning in fishing year 2010, a sector must develop, implement, and pay for, to the extent not funded by NMFS, an independent third-party dockside/roving and at-sea/electronic monitoring program that is satisfactory to, and approved by, NMFS for monitoring landings and utilization of sector ACE, as specified in this paragraph (b)(1)(v)(B). Any service providers providing dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and any dockside/roving and at-sea/electronic monitoring program proposed by sectors must meet the operational standards specified in paragraph (b)(5) and (b)(6) of this section, respectively, and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act.

(*1*) *Dockside/roving monitors.* Dockside/roving monitors shall monitor landings of regulated species and ocean pout by sector vessels at the first point of offload, whether directly to a federally permitted dealer or to a truck for transfer to a federally permitted dealer, to verify such landings at the time the landings are weighed by a federally permitted dealer and to certify the landing weights are accurate as reported on the dealer report. The level of coverage for landings by sector vessels is specified in paragraph (b)(1)(v)(B)(*3*) of this section. To ensure that these levels of coverage are achieved, if a trip has been selected to be observed by a dockside/roving monitor, all offloading events associated with that trip, regardless of how many or the location of offloading events, must be monitored. For example, if a trip is selected to be observed by a dockside/roving monitor, a vessel offloading at more than one dealer or facility must have a dockside/roving monitor present during the offload at each location. The details of the dockside/roving monitoring program used by each sector must be specified in the sector's operations plan and must be consistent with the operational standards specified in paragraph (b)(5) of this section. The Regional Administrator shall review the dockside/roving monitoring program and approve/disapprove it as part of the yearly operations plan in a manner consistent with the Administrative Procedure Act.

(*2*) *At-sea/electronic monitoring program.* Beginning in fishing year 2012, in addition to the dockside/roving monitoring requirement specified in paragraph (b)(1)(v)(B)(*1*) of this section, an at-sea/electronic monitoring program must be implemented to verify area fished as well as catch and discards by species and gear type. A sector may elect to develop an at-sea/electronic monitoring program before fishing year 2012 and specify the details of such a program in its operations plan. Electronic monitoring may be used in place of actual observers if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. No electronic monitoring technology may be used in place of an at-sea monitor unless approved by NMFS as part of the sector's annual operations plan. If either an at-sea monitor or electronic monitoring is assigned to a particular trip, a vessel may not leave port without the appropriate at-sea monitor or electronic monitoring equipment on board. The at-sea/electronic monitoring program developed and implemented by each sector must be consistent with the operational standards specified in paragraph (b)(6) of this section, with details of the program specified in the sector's annual operations plan. The Regional Administrator shall review the at-sea/electronic monitoring program and approve/disapprove it as part of the annual operations plan in a manner consistent with the Administrative Procedure Act. The level of coverage for landings by sector vessels is specified in paragraph (b)(1)(v)(B)(*3*) of this section.

(*3*) *Coverage levels.* Any service provider providing dockside/roving or at-sea monitoring services required under this paragraph (b)(1)(v)(B)(*3*) must provide coverage that is fair, equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all sector vessel operations throughout the fishing year.

(*i*) *Dockside/roving monitoring.* For fishing year 2010, at least 50 percent of all sector trips shall be monitored by dockside/roving monitors. Beginning in fishing year 2011, at least 20 percent of all Sector trips shall be monitored by dockside/roving monitors.

(*ii*) *At-sea/electronic monitoring.* Beginning in fishing year 2012, coverage levels for an at-sea monitoring program shall be specified by NMFS, but shall be less than 100 percent of all sector trips. Such coverage levels must be sufficient to at least meet the coefficient of variation specified in the Standardized Bycatch Reporting Methodology and accurately monitor sector operations. In the event that a NMFS-sponsored observer and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip.

(*4*) *Hail reports.* For the purposes of the dockside/roving and at-sea monitoring requirements specified in this paragraph (b)(1)(v)(B), sector vessels must submit all hail reports for a sector trip in which the NE multispecies catch applies against the ACE allocated to a sector, as specified in this part, to service providers offering dockside/roving and at-sea monitoring services pursuant to this paragraph (b)(1)(v)(B). The mechanism and timing of the transmission of such hail reports must be specified in the annual sector operations plan, consistent with paragraphs (b)(5) and (6) of this section.

(*5*) *Notification of service provider change.* If for any reason a sector decides to change service providers used to provide the dockside/roving and at-sea monitoring services required in this paragraph (b)(1)(v), the sector manager must first inform NMFS of the effective date of the change in service providers in conjunction with the submission of the next weekly sector catch report specified in paragraph (b)(1)(vi)(B) of this section. A sector may employ more than one service provider at any time, provide any service provider employed by a sector meets the standards specified in paragraph (b)(4) of this section.

(vi) *Sector reporting requirements.* In addition to the other reporting/recordkeeping requirements specified in this part, a sector's vessels must comply with the reporting requirements specified in this paragraph (b)(1)(vi).

(A) *VMS declarations and trip-level catch reports.* Prior to each sector trip, a sector vessel must declare into broad stock areas in which the vessel fishes and submit the VTR serial number associated with that trip pursuant to § 648.10(k). The sector vessel must also submit a VMS catch report detailing regulated species and ocean pout catch by broad stock areas when fishing in multiple stock areas on the same trip, pursuant to § 648.10(k).

(B) *Weekly catch report.* Each sector must submit weekly reports to NMFS stating the remaining balance of ACE allocated to each sector based upon regulated species and ocean pout

landings and discards of vessels participating in that sector and any compliance/enforcement concerns. These reports must include at least the following information, as instructed by the Regional Administrator: Week ending date; species, stock area, gear, number of trips, reported landings (landed pounds and live pounds), discards (live pounds), total catch (live pounds), status of the sector's ACE (pounds remaining and percent remaining), and whether this is a new or updated record of sector catch for each NE multispecies stock allocated to that particular sector; sector enforcement issues, including any discrepancies noted by dockside/roving monitors between dealers and offloads; summary of offloads witnessed by dockside/roving monitors for that reporting week; and a list of vessels landing for that reporting week. These weekly catch reports must be submitted no later than 2359 hr on Thursday of the week following the reporting week, as defined in this part. The frequency of these reports must be increased to more than a weekly submission when the balance of remaining ACE is low, as specified in the sector operations plan and approved by NMFS. If requested, sectors must provide detailed trip-by-trip catch data to NMFS for the purposes of auditing sector catch monitoring data based upon guidance provided by the Regional Administrator.

(C) *Year-end report.* An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards, of all species by sector vessels; the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions; and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.

(vii) *Interaction with other fisheries*—(A) *Use of DAS.* A sector vessel must comply with all measures specified for another fishery pursuant to this part, including any requirement to use a NE multispecies DAS. If the regulations of another fishery require the use of a NE multispecies DAS, the DAS allocation and accrual provisions specified in § 648.82(d) and (e), respectively, apply to each trip by a sector vessel, as applicable. For example, if a sector vessel is also issued a limited access monkfish Category C permit and is required to use a NE multispecies DAS concurrent with a monkfish DAS under this part, any NE multispecies DAS used by the sector vessel accrues, as specified in § 648.82(e)(1)(ii) based upon the vessel's NE multispecies DAS allocation calculated pursuant to § 648.82(d)(1)(iv)(B).

(B) *Availability of ACE.* Notwithstanding the requirements in paragraph (b)(1)(vii)(A) of this section, if a sector has not been allocated or does not acquire sufficient ACE available to cover the catch of a particular stock of NE multispecies while participating in another fishery in which such catch would apply to the ACE allocated to a sector, vessels participating in that sector cannot participate in those other fisheries unless NMFS has approved a sector operations plan that ensures that regulated species or ocean pout will not be caught while participating in these other fisheries.

(viii) *ACE transfers.* All or a portion of a sector's ACE for any NE multispecies stock may be transferred to another sector at any time during the fishing year and up to 2 weeks into the following fishing year (i.e., through May 14) to cover any overages during the previous fishing year. A sector is not required to transfer ACE to another sector. An ACE transfer only becomes effective upon approval by NMFS, as specified in paragraph (b)(1)(viii)(B).

(A) *Application to transfer ACE.* ACE may be transferred from one sector to another through written request to the Regional Administrator. This request must include the name of the sectors involved, the amount of each ACE to be transferred, the fishing year in which the ACE transfer applies, and the amount of compensation received for any ACE transferred, as instructed by the Regional Administrator.

(B) *Approval of an ACE transfer request.* NMFS shall approve/disapprove a request to transfer ACE based upon compliance by each sector and its participating vessels with the reporting requirements specified in this part. The Regional Administrator shall inform both sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.

(C) *Duration of transfer.* Notwithstanding ACE carried over into the next fishing year pursuant to paragraph (b)(1)(i)(C) of this section, ACE transferred pursuant to this paragraph (b)(1)(viii) is only valid for the fishing year in which the transfer is approved, with the exception of ACE transfer requests that are submitted up to 2 weeks into the subsequent fishing year to address any potential ACE overages from the previous fishing year, as provided in paragraph (b)(1)(iii) of this section.

(ix) *Trip limits.* With the exception of stocks listed in § 648.87(l), a sector vessel is not limited in the amount of allocated NE multispecies stocks that can be harvested on a particular fishing trip, unless otherwise specified in the operations plan.

(2) *Operations plan and sector contract.* To be approved to operate, each sector must submit an operations plan and sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations. This operations plan may cover a 1- or 2-year period, provided the analysis required in paragraph (b)(3) of this section is sufficient to assess the impacts of sector operations during the 2-year period and that sector membership, or any other parameter that may affect sector operations during the second year of the approved operations plan, does not differ to the point where the impacts analyzed by the supporting NEPA document are compromised. Each vessel and vessel operator and/or vessel owner participating in a sector must agree to and comply with all applicable requirements and conditions of the operations plan specified in this paragraph (b)(2) and the letter of authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved operations plan. At least the following elements must be contained in either the operations plan or sector contract:

(i) A list of all parties, vessels, and vessel owners who will participate in the sector;

(ii) A list of all Federal and state permits held by persons participating in the sector, including an indication for each permit whether it is enrolled and will actively fish in a sector, or will be subject to the provisions of the common pool;

(iii) A contract signed by all sector participants indicating their agreement to abide by the operations plan;

(iv) The name of a designated representative or agent of the sector for service of process;

(v) If applicable, a plan for consolidation or redistribution of ACE detailing the quantity and duration of

such consolidation or redistribution within the sector;

(vi) A list of the specific management rules the sector participants will agree to abide by in order to avoid exceeding the allocated ACE for each stock, including a plan of operations or cessation of operations once the ACEs of one or more stocks are harvested and detailed plans for enforcement of the sector rules;

(vii) A plan that defines the procedures by which members of the sector that do not abide by the rules of the sector will be disciplined or removed from the sector, and a procedure for notifying NMFS of such expulsions from the sector;

(viii) If applicable, a plan of how the ACE allocated to the sector is assigned to each vessel;

(ix) If the operations plan is inconsistent with, or outside the scope of the NEPA analysis associated with the sector proposal/framework adjustment as specified in paragraph (a)(1) of this section, a supplemental NEPA analysis may be required with the operations plan;

(x) Detailed information about overage penalties or other actions that will be taken if a sector exceeds its ACE for any stock;

(xi) Detailed plans for the monitoring and reporting of landings and discards by sector participants, including, but not limited to, detailed information describing the sector's dockside/roving and at-sea/electronic monitoring program for monitoring utilization of ACE allocated to that sector; identification of the independent third-party service providers employed by the sector to provide dockside/roving and at-sea/electronic monitoring services; the mechanism and timing of any hail reports necessary to coordinate the deployment of dockside/roving and at-sea monitors and electronic monitoring equipment; a list of specific ports where participating vessels will land fish, with specific exemptions noted for safety, weather, etc., allowed, provided the sector provides reasonable notification to NMFS concerning a deviation from the listed ports; and any other information about such a program required by NMFS;

(xii) ACE thresholds that may trigger revisions to sector operations to ensure allocated ACE is not exceeded, and details regarding the sector's plans for notifying NMFS once the specified ACE threshold has been reached;

(xiii) Identification of any potential redirection of effort into other fisheries expected as a result of sector operations, and, if necessary, proposed limitations to eliminate any adverse effects expected from such redirection of effort;

(xiv) If applicable, description of how regulated species and ocean pout will be avoided while participating in other fisheries that have a bycatch of regulated species or ocean pout if the sector does not have sufficient ACE for stocks of regulated species or ocean pout caught as bycatch in those fisheries, as specified in paragraph (b)(1)(vii)(B) of this section; and

(xv) A list of existing regulations that the sector is requesting exemption from during the following fishing year pursuant to paragraph (c)(2) of this section.

(3) *NEPA analysis.* In addition to the documents required by paragraphs (a)(1) and (b)(2) of this section, before NMFS can approve a sector to operate during a particular fishing year, each sector must develop and submit to NMFS, in conjunction with the yearly operations plan and sector contract, an appropriate NEPA analysis assessing the impacts of forming the sector and operating under the measures described in the sector operations plan.

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide dockside/roving and at-sea/electronic monitoring services described in § 648.82(n)(2) and paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers and associated dockside, roving, and/or at-sea monitors as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers and/or individual monitors through notice in writing to individual service providers/monitors if the following criteria are no longer being met:

(i) *Service provider information.* As part of the application for service provider approval/certification, potential service providers must include at least the following information:

(A) Identification of corporate structure, including the names and duties of controlling interests in the company such as owners, board members, authorized agents, and staff; and articles of incorporation, or a partnership agreement, as appropriate;

(B) Contact information for official correspondence and communication with any other office;

(C) A statement, signed under penalty of perjury, from each owner, board member, and officer that they are free from a conflict of interest with fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and will not accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from such parties;

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider;

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, and personnel administration;

(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring/reporting service provider and the arrangements to be used, including whether the service provider is able to offer dockside and/or at-sea monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover dockside, roving, and at-sea monitors (including during training); vessel owner; and service provider;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's contract or employment status;

(I) Proof that the service provider's dockside, roving, and at-sea monitors have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with a dockside, roving, and at-sea monitors, including, but not limited to, personal injury, death, harassment, or intimidation; and

(K) Evidence that the company is in good financial standing;

(ii) *Service provider performance requirements.* Dockside/roving and at-sea monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) A service provide must establish and carry out a comprehensive plan to deploy NMFS-certified dockside, roving, and/or at-sea monitors, or other

at-sea monitoring mechanism, such as electronic monitoring equipment that is approved by NMFS, according to a prescribed coverage level (or level of precision for catch estimation), as specified by NMFS, including all of the necessary vessel reporting/notice requirements to facilitate such deployment, as follows:

(*1*) A service provider must be available to industry 24 hr per day, 7 days per week, with the telephone system monitored a minimum of four times daily to ensure rapid response to industry requests;

(*2*) A service provider must be able to deploy dockside, roving, and/or at-sea monitors, or other approved at-sea monitoring mechanism to all ports in which service is required by sectors, or a subset of ports as part of a contract with a particular sector;

(*3*) A service provider must report dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanism deployments to NMFS and the sector manager in a timely manner to determine whether the predetermined coverage levels are being achieved for the appropriate sector;

(*4*) A service provider must assign dockside, roving, and at-sea monitors and other approved at-sea monitoring mechanisms without regard to any preference by the sector manager or representatives of vessels other than when the service is needed and the availability of approved/certified monitors and other at-sea monitoring mechanisms;

(*5*) A service provider's dockside, roving, and at-sea monitor assignment must be fair, equitable, representative of fishing activities within each sector, and able to monitor fishing activity throughout the fishing year;

(*6*) For service providers offering catch estimation or at-sea monitoring services, a service provider must be able to determine an estimate of discards for each trip and provide such information to the sector manager and NMFS, as appropriate and as required by this section;

(B) The service provider must ensure that dockside, roving, and at-sea monitors remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload;

(C) The service provider must report possible dockside, roving, and at-sea monitor harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding dockside, roving, or at-sea monitor conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (i.e., sectors and participating vessels) and between the service provider and specific dockside, roving, or at-sea monitors;

(E) The service provider must submit to NMFS, if requested, copies of any information developed and used by the service providers distributed to vessels, such as informational pamphlets, payment notification, description of duties, etc.;

(F) A service provider may refuse to deploy a dockside, roving, or at-sea monitor or other approved at-sea monitoring mechanism on a requesting fishing vessel for any reason including, but not limited to, the following:

(*1*) If the service provider does not have an available dockside/roving monitor prior to a vessel's intended date/time of landing, or if the service provider does not have an available at-sea monitor or other at-sea monitoring mechanism approved by NMFS within the advanced notice requirements established by the service provider;

(*2*) If the service provider is not given adequate notice of vessel departure or landing from the sector manager or participating vessels, as specified by the service provider;

(*3*) For the purposes of at-sea monitoring, if the service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described in § 600.746; and

(*4*) Failure to pay for previous deployments of dockside, roving, or at-sea monitors, or other approved at-sea monitoring mechanism.

(G) With the exception of a service provider offering reporting, dockside, and/or at-sea monitoring services to participants of another fishery managed under Federal regulations, a service provider must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) A system to record, retain, and distribute the following information to NMFS, as requested, for a period specified by NMFS, including:

(*1*) Dockside, roving, and/or at-sea monitor and other approved monitoring equipment deployment levels, including the number of refusals and reasons for such refusals;

(*2*) Incident/non-compliance reports (e.g., failure to offload catch); and

(*3*) Hail reports, landings records, and other associated interactions with vessels and dealers.

(I) A means to protect the confidentiality and privacy of data submitted by vessels, as required by the Magnuson-Stevens Act; and

(J) A service provider must be able to supply dockside and at-sea monitors with sufficient safety and data-gathering equipment, as specified by NMFS.

(iii) *Standards for individual dockside/roving monitors.* For an individual to be approved/certified as a dockside or roving monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of a dockside/roving monitor pursuant to standards established by NMFS, such as being certified by a physician to be physically fit to work as a dockside/roving monitor after consideration that a monitor may be required to climb a ladder to inspect fish holds and/or trucks;

(D) Absence of fisheries-related convictions based upon a thorough background check; and

(E) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(iv) *Standards for individual at-sea monitors.* For an individual to be approved/certified as an at-sea monitor, the service provider must demonstrate that each potential monitor meets the following criteria:

(A) A high school diploma or legal equivalent;

(B) Successful completion of all NMFS-required training and briefings before deployment;

(C) Physical and mental capacity for carrying out the responsibilities of an at-sea monitor on board fishing vessels,

pursuant to standards established by NMFS such as being certified by a physician to be physically fit to work as an at-sea monitor after consideration of at least the following work-related issues:

(*1*) Susceptibility to chronic motion sickness;

(*2*) Ability to live in confined quarters;

(*3*) Ability to tolerate stress;

(*4*) Ability to lift and carry heavy objects up to 50 lb (22.7 kg);

(*5*) Ability to drag heavy objects up to 200 lb (90.7 kg); and

(*6*) Ability to climb a ladder.

(D) A current Red Cross (or equivalent) CPR/first aid certification;

(E) Absence of fisheries-related convictions, based upon a thorough background check; and

(F) Independence from fishing-related parties including, but not limited to, vessels, dealers, shipping companies, sectors, sector managers, advocacy groups, or research institutions to prevent conflicts of interest.

(5) *Dockside monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any dockside monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B)(*1*) of this section, or required as part of the trimester TAC AM specified in § 648.82(n)(2) must meet the following operational standards to be approved by NMFS:

(i) *Vessel requirements*—(A) *Reporting/recordkeeping requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of independent dockside and roving monitors pursuant to § 648.82(n)(2)(iv) and paragraph (b)(1)(v) of this section, the operator of a vessel fishing under the provisions of the common pool or on a sector trip must comply with the following requirements:

(*1*) *Trip-start hail report.* The vessel operator must submit a trip-start hail report prior to departing port at the beginning of each trip notifying the sector manager and/or dockside/roving monitor service provider of the vessel permit number; trip ID number in the form of the VTR serial number of the first VTR page for that trip, or another trip identifier specified by NMFS; and an estimate of the date and time of arrival to port. Trip-start hail reports by vessels operating less than 6 hours or within 6 hours of port must also include estimated date and time of offload. If the vessel operator does not receive confirmation of the receipt of the trip-start hail report from the dockside/roving monitor service provider within 10 minutes of sending the original trip-start hail report, the operator must contact the service provider to confirm the trip-start hail report via an independent back-up system developed by the service provider.

(*2*) *Trip-end hail report.* Prior to returning to port upon the completion of a fishing trip, the vessel operator must submit a trip-end hail report notifying the dockside/roving monitor service provider of the vessel permit number; trip ID submitted pursuant to paragraph (b)(5)(i)(A)(*1*) of this section; intended offloading location(s), including the dock/dealer, port/harbor, and state for the first dealer/facility where the vessel intends to offload catch and the port/harbor, and state for the second dealer/facility where the vessel intends to offload catch; estimated date/time of arrival; estimated date/time of offload; estimated total amount of regulated species on board (in pounds, landed weight); and estimated total amount of all other species retained (in pounds, landed weight), including species managed by other FMPs, on board. The trip-end hail report must be submitted at least 6 hr in advance of landing for all trips at least 6 hr in duration or occurring more than 6 hr from port. For shorter trips, the trip-end hail reports must be submitted within sufficient time to allow the deployment of the dockside/roving monitor to the offloading site, as specified by the dockside/roving monitoring service provider in consultation with NMFS Office of Law Enforcement. These reports may be in the form of an email to the dockside/roving monitor service provider or another means of communication specified by the service provider.

(B) *Copies of trip documents.* The operator of a sector vessel that is issued a waiver from the dockside/roving monitoring requirements specified in paragraph (b)(1)(v)(B) of this section for a particular trip must provide copies of all VTRs and dealer receipts associated with that trip to the sector or designated third party contractor, as appropriate, within 24 hr of offloading.

(C) *Vessel offloads.* A vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor(s) assigned to that trip is present, as specified in paragraph (b)(5)(ii)(A) of this section.

(ii) *Dockside/roving monitor service provider requirements*—(A) *Confirmation of vessel hail reports.* Upon receipt of a trip-start or trip-end hail reports pursuant to paragraphs (b)(5)(i)(A)(*1*) and (*2*) of this section, the service provider shall immediately send confirmation that the trip-start or trip-end hail report was received to the vessel. A service provider must establish an independent back-up system to the primary hail report system (e.g., a phone number if the primary hail report system is based upon email) to ensure receipt of such trip-start or trip-end hail reports. In confirming the receipt of a trip-end hail report, the service provider will inform the vessel operator that the offload(s) associated with that trip will be monitored by a dockside/roving monitor or that the vessel is issued a dockside/roving monitor waiver for that trip. If a dockside/roving monitor is assigned to observe a trip's offloads, but cannot meet the vessel as scheduled, the service provider must inform the vessel, the sector, and NMFS Office of Law Enforcement, as appropriate, as soon as possible, to specify the time when the dockside/roving monitor will arrive, or issue the vessel a waiver for that particular trip. The service provider or sector manager must also provide NMFS Office of Law Enforcement with the information contained in the trip-start and trip-end hail reports, including whether the vessel has been assigned a dockside/roving monitor for that trip, at the same time that the confirmation is sent to the vessel.

(B) *Documentation of offloads*—(*1*) *Offloads directly to a dealer.* Upon the completion of the offload, the dockside/roving monitor shall retain a copy of all VTRs associated with the trip, including all information submitted (i.e., no blocked cells) provided by the sector vessel; record whether the dealer scales were certified by an appropriate state agency; observe and record whether ice and box weights are tared by the dealer before catch is added, or record the estimated weight of ice and the box from the dealer; record the weight of catch offloaded by species (and market category, if culled); determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; sign the dealer receipt associated with the offload for each trip (i.e., dealer/weighout slip or other form of documentation of the amount of catch offloaded by the dealer), or have the dealer sign the dockside/roving monitor report, as appropriate; provide data summarizing the offloads of each trip, including copies of the VTR(s), dockside/roving monitor report, and dealer receipt(s), if separate from the

dockside/roving monitor report, to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator.

(*2*) *Offloads to a truck.* A roving monitor observing offloads into a truck shall retain copies of all VTRs filled out for that trip with all information submitted (i.e., no blocked cells) provided by the sector vessel; if there are no scales at the offload site, record the number of totes of each species and the captain's estimate of the weight in each tote; if there are scales at the offload site, record whether the scales were certified by an appropriate state agency and observe and record whether ice and box weights are tared before catch is added, or record the estimated weight of ice and the box; determine and record whether all fish have been offloaded, including an estimate of the weight of fish being retained by captain and crew for personal consumption or other use and the reason for retention of such catch; record all offloaded catch by species and market class in a report, unless the driver creates such a report that the roving monitor may use which shall be signed by the roving monitor; document that each tote is labeled with the appropriate identifying information including, but not limited to, the serial number of the first VTR page filled out for that trip or another trip ID specified by NMFS, the roving monitor's name, tote number, and species; provide data summarizing the offloads of each trip, including copies of the VTR(s) and roving monitor report to the sector manager or designated third party contractor, as appropriate, within 24 hr of offloading; and retain a copy of such information to document that the offload was monitored, as instructed by the Regional Administrator. The roving monitor must submit copies of the VTR(s); driver manifest(s), if separate from the roving monitor's report; and the roving monitor's report to the sector manager or third-party service provider, as appropriate.

(C) *Record retention.* The dockside/roving monitor service provider shall retain an electronic record of each offload observed and make electronic and other records that document an offload available to NMFS upon request.

(D) *Safe-harbor provision.* The dockside/roving monitor service provider must work with the sector and NMFS Office of Law Enforcement to establish an acceptable process for safe-harbor situations where a vessel is unable to follow normal dockside/roving monitor protocols outlined in paragraph (b)(5) of this section due to an emergency situation.

(iii) *Adjustment to operational standards.* The dockside/roving monitor operational standards specified in paragraph (b)(5) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(6) *At-sea/electronic monitoring operational standards.* In addition to the independent third-party monitoring provider standards specified in paragraph (b)(4) of this section, any at-sea/electronic monitoring program developed as part of a sector's yearly operations plan pursuant to paragraph (b)(1)(v)(B)(*2*) of this section must meet the following operational standards to be approved by NMFS:

(i) *Gear.* Each at-sea monitor must be provided with all of the equipment specified by the Northeast Fisheries At-sea Monitoring Program. A list of such equipment is available from the Northeast Fisheries Science Center upon request. At-sea/electronic monitoring service providers are responsible for the cost of providing such gear to at-sea monitors to the extent not funded by NMFS. This gear shall be inspected by NMFS upon the completion of training required pursuant to paragraph (b)(4)(i)(I) of this section.

(ii) *Vessel selection protocol.* An at-sea/electronic monitoring program service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels required pursuant to paragraph (b)(1)(v)(B)(*3*) of this section. This protocol must include a method to allow for waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.

(iii) *Reporting/recordkeeping requirements*—(A) *Vessel requirements.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(*2*) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, and an estimate of the date/time of departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (e.g., phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(6)(iii)(B)(*1*) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(B) *At-sea/electronic monitoring service provider requirements*—(*1*) *Confirmation of pre-trip notification.* Upon receipt of a pre-trip notification pursuant to paragraph (b)(6)(iii)(A) of this section, the service provider shall inform the vessel operator whether the vessel will be monitored by an at-sea observer or electronic monitoring equipment for that trip, or will be issued an at-sea/electronic monitoring waiver for that trip based upon the vessel selection protocol specified in paragraph (b)(6)(ii) of this section.

(*2*) *At-sea/electronic monitoring report.* A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hr of the completion of the trip, as instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) *Safety hazards*—(A) *Vessel requirements.* The operator of a sector vessel must detail and identify any safety hazards to any at-sea monitor assigned pursuant to paragraph (b)(6)(iii)(B)(*1*) of this section prior to leaving port. A vessel cannot begin a trip if it has failed a review of safety issues pursuant to paragraph (b)(6)(iv)(B) of this section, until the identified safety deficiency has been resolved pursuant to § 600.746(i).

(B) *At-sea/electronic monitoring service provider requirements.* An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port

onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(6)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

(v) *Adjustment to operational standards.* The at-sea/electronic monitoring operational standards specified in paragraph (b)(6) of this section may be revised by the Regional Administrator in a manner consistent with the Administrative Procedure Act.

(c) *Approval of a sector and granting of exemptions by the Regional Administrator.* (1) Once the Regional Administrator has made a preliminary determination that the documents submitted pursuant to paragraphs (a)(1), (b)(2), and (b)(3) of this section appear to comply with the requirements of this section, NMFS may consult with the Council and approve or disapprove sector operations consistent with the Administrative Procedure Act and other applicable law.

(2) If a sector is approved, the Regional Administrator shall issue a letter of authorization to each vessel operator and/or vessel owner participating in the sector. The letter of authorization shall authorize participation in the sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraphs (c)(2)(i) and (ii) of this section, in order to allow vessels to fish in accordance with an approved operations plan, provided such exemptions are consistent with the goals and objectives of the FMP. The letter of authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the operations plan and the sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: NE multispecies year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements or SAP-specific reporting requirements specified in this part). This list may be modified through a framework adjustment, as specified in § 648.90.

(ii) *Universal sector exemptions.* All sector vessels are exempt from the following Federal fishing regulations under this part:

(A) Trip limits on NE multispecies stocks for which a sector receives an allocation of ACE pursuant to paragraph (b)(1)(i) of this section (i.e., all stocks except Atlantic halibut, ocean pout, windowpane flounder, SNE/MA winter flounder, and Atlantic wolffish);

(B) The GOM Rolling Closure Areas and the GB Seasonal Closed Area specified in § 648.81(f)(1) and (g), respectively, provided sector vessels comply with the sector-specific GOM Rolling Closure Areas specified in § 648.81(f)(2)(vi);

(C) NE multispecies DAS restrictions other than those required to comply with effort controls in other fisheries, as specified in §§ 648.92 and 648.322; and

(D) The minimum codend mesh size restrictions for trawl gear specified in § 648.80(a)(4)(i) when using a haddock separator trawl defined in § 648.85(a)(3)(iii) or the Ruhle trawl defined in § 648.85(b)(6)(iv)(J)(*3*) within the GB RMA, as defined in § 648.80(a)(2), provided sector vessels use a codend with 6-inch (15.2-cm) minimum mesh.

(3) The Regional Administrator may withdraw approval of a sector, after consultation with the Council, at any time, if it is determined that sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a sector may only be done in a manner consistent with the Administrative Procedure Act and other applicable law.

(d) *Approved sector allocation proposals.* Eligible NE multispecies vessels, as specified in paragraph (a)(3) of this section, may participate in the sectors identified in paragraphs (d)(1) through (19) of this section, provided the operations plan is approved by the Regional Administrator in accordance with paragraph (c) of this section and each participating vessel and vessel operator and/or vessel owner complies with the requirements of the operations plan, the requirements and conditions specified in the letter of authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section. All operational aspects of these sectors shall be specified pursuant to the operations plan and sector contract, as required by this section.

(1) *GB Cod Hook Sector.*
(2) *GB Cod Fixed Gear Sector.*
(3) *Sustainable Harvest Sector.*
(4) *Port Clyde Community Groundfish Sector.*
(5) *Northeast Fishery Sector I.*
(6) *Northeast Fishery Sector II.*
(7) *Northeast Fishery Sector III.*
(8) *Northeast Fishery Sector IV.*
(9) *Northeast Fishery Sector V.*
(10) *Northeast Fishery Sector VI.*
(11) *Northeast Fishery Sector VII.*
(12) *Northeast Fishery Sector VIII.*
(13) *Northeast Fishery Sector IX.*
(14) *Northeast Fishery Sector X.*
(15) *Northeast Fishery Sector XI.*
(16) *Northeast Fishery Sector XII.*
(17) *Northeast Fishery Sector XIII.*
(18) *Tristate Sector.*
(19) *Northeast Coastal Communities Sector.*

■ 15. In § 648.88, revise paragraph (a)(1) to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 200 lb (90.7 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. Should the GOM cod trip limit specified in § 648.86(b)(1) be adjusted in the future, the cod trip limit specified in this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

* * * * *

■ 16. In § 648.89, revise the heading of paragraph (c); revise paragraphs (a), (b)(1), (b)(4), (c)(1)(v), and (c)(2)(v); and add paragraphs (c)(6), (c)(7), and (f) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter/party vessels permitted under this part and not fishing under the DAS program or under the restrictions and conditions of an approved sector operations plan, as specified in § 648.87(c), and recreational fishing vessels in the EEZ, are prohibited from fishing with more than one line per angler, and must stow all other fishing gear on board the vessel as specified in § 648.23(b).

(b) * * *

(1) *Minimum fish sizes.* Unless further restricted under paragraph (b)(3) of this section, persons aboard charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program or under the restrictions and conditions of an approved sector operations plan, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than

the minimum fish sizes, measured in total length (TL), as follows:

Species	Size (inches)
Cod	22 (55.9 cm)
Haddock	18 (45.7 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	41 (104.1 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

(4) Fish fillets, or parts of fish, must have at least 2 square inches (5.1 square cm) of skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. The skin must be contiguous and must allow ready identification of the fish species.

* * * * *

(c) *Possession restrictions.*

(1) * * *

(v) *Seasonal GOM cod possession prohibition.* Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1) may not fish for or possess any cod from November 1 through April 15. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

* * * * *

(2) * * *

(v) *Seasonal GOM cod possession prohibition.* Persons aboard charter/party fishing vessels permitted under this part and not fishing under the NE multispecies DAS program or on a sector trip that are fishing in the GOM Regulated Mesh Area specified in § 648.80(a)(1) may not fish for, possess, or land any cod from November 1 through April 15. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

* * * * *

(6) *Atlantic wolffish.* Possession of Atlantic wolffish by charter/party vessels permitted under this part and not fishing under the NE multispecies DAS program and recreational fishing vessels fishing in the EEZ is prohibited.

(7) *SNE/MA winter flounder.* Private recreational and charter/party vessels fishing in the SNE/MA winter flounder stock area, as defined in § 648.85(b)(6)(v)(F), may not fish for, possess, or land winter flounder. Recreational vessels in possession of winter flounder caught outside of the SNE/MA winter flounder may transit this area, provided all bait and hooks are removed from all fishing rods, and any winter flounder on board has been stored.

* * * * *

(f) *Recreational fishery AM*—(1) *Catch evaluation.* As soon as recreational catch data are available for the entire previous fishing year, the Regional Administrator will evaluate whether recreational catches exceed any of the sub-ACLs specified for the recreational fishery pursuant to § 648.90(a)(4). When evaluating recreational catch, the components of recreational catch that are used shall be the same as those used in the most recent assessment for that particular stock. To determine if the regulated species or ocean pout sub-ACL specified for the recreational fishery was exceeded, the Regional Administrator shall compare the 3-year average of recreational catch to the 3-year average of the recreational sub-ACL for each stock, as follows:

(i) For fishing year 2010, recreational catch shall be compared to the recreational sub-ACL for that stock for fishing year 2010.

(ii) For fishing year 2011, the average recreational catch for fishing years 2010 and 2011 shall be compared to the average recreational sub-ACLs for that stock during fishing years 2010 and 2012.

(iii) Starting in fishing year 2012, the 3-year average recreational catch shall be compared to the 3-year average of the recreational sub-ACLs for that stock.

(2) *Measure adjustment.* If it is determined that any recreational sub-ACL was exceeded, as specified in paragraph (f)(1) of this section, the Regional Administrator, after consultation with the New England Fishery Management Council, shall develop measures necessary to prevent the recreational fishery from exceeding the appropriate sub-ACL in future years. Appropriate AMs for the recreational fishery, including adjustments to fishing season, minimum fish size, or possession limits, may be implemented in a manner consistent with the Administrative Procedure Act, with final measures published in the **Federal Register** no later than January when possible. Separate AMs shall be developed for the private and charter/party components of the recreational fishery.

■ 17. In § 648.90, revise the introductory text for this section; revise paragraphs (a)(2)(i) through (iv), (a)(2)(vi), and (c)(1)(i); add introductory text to paragraph (a); and add paragraphs (a)(4) through (6) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures, setting of ACLs and other allocations, AMs, specifications, and flexible area action system.

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process.

(a) *NE multispecies.* For the purpose of this paragraph (a), the term "NE multispecies fishery" is defined as common pool vessels, sector vessels, and private recreational and charter/party vessels, as defined in this part; the term "NE multispecies commercial fishery" is defined as vessels issued a limited access NE multispecies permit, or an open access NE multispecies Handgear B permit; and the term "NE multispecies recreational fishery" is defined as private recreational vessels and charter or party boats, as further defined in this part.

* * * * *

(2) * * *

(i) The NE multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop ACLs for the upcoming fishing year(s) as described in paragraph (a)(4) of this section and develop options for consideration by the Council if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives, including changes to the Northeast Region SBRM.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS allocations, DAS use,

sector operations, and other measures of fishing effort; survey results; stock status; current estimates of fishing mortality and overfishing levels; social and economic impacts; enforcement issues; and any other relevant information.

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identification and distribution of ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

(iv) The Council shall review the ACLs recommended by the PDT and all of the options developed by the PDT and other relevant information; consider public comment; and develop a recommendation to meet the FMP objectives pertaining to regulated species or ocean pout that is consistent with applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(2)(vii) of this section, provided the option meets the FMP objectives and is consistent with applicable law.

* * * * *

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register,** in a manner consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used or regulated species or ocean pout landed by a vessel on or after May 1 will be counted against any DAS or sector ACE allocation the vessel or sector ultimately receives for that year, as appropriate.

* * * * *

(4) *Process for setting ABCs and ACLs*—(i) *ABC/ACL recommendations.* As described in this paragraph (a)(4), with the exception of stocks managed by the Understanding, the PDT shall develop recommendations for setting an ABC, ACL, and OFL for each NE multispecies stock for each of the next 3 years as part of the biennial review process specified in paragraph (a)(2) of this section. ACLs can also be specified based upon updated information in the annual SAFE report, as described in paragraph (a)(1) of this section, and other available information as part of a specification package, as described in paragraph (a)(5) of this section. For NE multispecies stocks or stock components managed under both the NE Multispecies FMP and the Understanding, the PDT shall develop recommendations for ABCs, ACLs, and OFLs for the pertinent stock or stock components annually, as described in this paragraph (a)(4) and § 648.85(a)(2).

(A) *ABC recommendations.* The PDT shall develop ABC recommendations based on the ABC control rule, the fishing mortality rate necessary to rebuild the stock, guidance from the SSC, and any other available information. The PDT recommendations shall be reviewed by the SSC. Guided by terms of reference developed by the Council, the SSC shall either concur with the ABC recommendations provided by the PDT, or provide alternative recommendations for each stock of regulated species or ocean pout and describe the elements of scientific uncertainty used to develop its recommendations. Should the SSC recommend an ABC that differs from that originally recommend by the PDT, the PDT shall revise its ACL recommendations if necessary to be consistent with the ABC recommendations made by the SSC. In

addition to consideration of ABCs, the SSC may consider other related issues specified in the terms of reference developed by the Council, including, but not limited to, OFLs, ACLs, and management uncertainty.

(B) *ACL recommendations.* The PDT shall develop ACL recommendations based upon ABCs recommended by the SSC and the pertinent recommendations of the Transboundary Management Guidance Committee (TMGC). The ACL recommendations of the PDT shall be specified based upon total catch for each stock (including both landings and discards), if that information is available. The PDT shall describe the steps involved with the calculation of the recommended ACLs and uncertainties and risks considered when developing these recommendations, including whether different levels of uncertainties were used for different sub-components of the fishery and whether ACLs have been exceeded in recent years. Based upon the ABC recommendations of the SSC and the ACL recommendations of the PDT, the Council shall adopt ACLs that are equal to or lower than the ABC recommended by the SSC to account for management uncertainty in the fishery.

(ii) *Timing.* The PDT recommendations for setting ABCs and ACLs shall be provided to the SSC prior to the September Council meeting, to the extent possible. The Council shall consider the ABC recommendations of the SSC and the ACL recommendations of the PDT (and TMGC) and shall make a decision on those recommendations prior to December 1, to the extent possible. Once the Council has approved its recommended ACLs, they shall be submitted to NMFS prior to December 1, to the extent possible for approval and implementation. If the Council is submitting a management action as part of the biennial adjustment process, the ACLs can be included in that document along with any necessary analysis required by applicable law. After receipt of the Council recommendation for ACLs, either as part of a new management action or as part of a specification package, as described in paragraph (a)(5) of this section, NMFS shall review the Council's decision and, if consistent with applicable law, implement the ACL in a manner consistent with the Administrative Procedure Act.

(iii) *ABC/ACL distribution.* The ABCs/ACLs adopted by the Council for each regulated species or ocean pout stock pursuant to this paragraph (a)(4) shall be subdivided among the various sub-components of the fishery, as specified in paragraphs (a)(4)(iii)(A) through (E) of this section. For transboundary stocks managed by the Understanding, pursuant to § 648.85(a), the distribution of ABC/ACLs described in paragraphs (a)(4)(iii)(A) through (E) of this section shall be based upon the catch available to U.S. fishermen. The Council may revise its recommendations for the distribution of ABCs and ACLs among these and other sub-components through the process to specify ABCs and ACLs, as described in this paragraph (a)(4).

(A) *Regulated species or ocean pout catch by vessels outside of the FMP.* The catch of regulated species or ocean pout that is expected to be harvested by vessels operating in state waters that have not been issued a Federal NE multispecies permit and are not subject to the regulations specified in this part shall be deducted from the ABC/ACL of each regulated species or ocean pout stock pursuant to the process for specifying ABCs and ACLs, as described in this paragraph (a)(4).

(B) *Regulated species or ocean pout catch by exempted fisheries.* Regulated species or ocean pout catch by other, non-specified sub-components of the fishery, including, but not limited to, exempted fisheries that occur in Federal waters and fisheries harvesting exempted species specified in § 648.80(b)(3) shall be deducted from the ABC/ACL of each regulated species or ocean pout stock, pursuant to the process to specify ABCs and ACLs described in this paragraph (a)(4). The catch of these non-specified sub-components of the ACL shall be monitored using data collected pursuant to this part. If catch from such fisheries exceeds the amount specified in this paragraph (a)(4)(iii)(B), AMs shall be developed to prevent the overall ACL for each stock from being exceeded, pursuant to the framework adjustment process specified in this section.

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery.* Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. At a minimum, these values must be consistent with the incidental catch amounts for yellowtail flounder specified for the closed area access programs described in §§ 648.60(a)(5) and 648.85(c).

(D) *Haddock catch by the Atlantic herring fishery.* The GOM and GB haddock ABC/ACL shall each be reduced by 0.2 percent to account for haddock bycatch in the Atlantic herring fishery, pursuant to the restrictions at §§ 648.85(d) and 648.86(a)(3) and pursuant to the process for specifying ABCs and ACLs described in this paragraph (a)(4).

(E) *Regulated species or ocean pout catch by the NE multispecies commercial and recreational fisheries.* Unless otherwise specified in the ACL recommendations developed pursuant to paragraph (a)(4)(i)(B), after all of the deductions and considerations specified in paragraphs (a)(4)(iii)(A) through (D) of this section, the remaining ABC/ACL for each regulated species or ocean pout stock shall be allocated to the NE multispecies commercial fishery, pursuant to this paragraph (a)(4)(iii)(E).

(*1*) *Recreational allocation.* Unless otherwise specified in paragraph (a)(5) of this section, recreational catches shall be compared to the ACLs allocated pursuant to this paragraph (a)(4)(iii)(E)(*1*) for the purposes of determining whether adjustments to recreational measures are necessary, pursuant to the recreational fishery AMs specified in § 648.89(f).

(*i*) *Stocks allocated.* Unless otherwise specified in this paragraph (a)(4)(iii)(E)(*1*), the ABCs/ACLs for GOM cod and GOM haddock available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section shall be divided between commercial and recreational components of the fishery, based upon the average proportional catch of each component for each stock during fishing years 2001 through 2006.

(*ii*) *Process for determining if a recreational allocation is necessary.* A recreational allocation may not be made if it is determined that, based upon available information, the ACLs for these stocks are not being fully harvested by the NE multispecies fishery, or if the recreational harvest, after accounting for state waters catch pursuant to paragraph (a)(4)(iii)(A) of this section, is less than 5 percent of the overall catch for a particular stock of regulated species or ocean pout.

(*2*) *Commercial allocation.* The ABC/ACL for regulated species or ocean pout stocks available to the commercial NE multispecies fishery, after consideration of the recreational allocation pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, shall be divided between

vessels operating under approved sector operations plans, as described at § 648.87(c), and vessels operating under the provisions of the common pool, as defined in this part, based upon the cumulative PSCs of vessels participating in sectors calculated pursuant to § 648.87(b)(1)(i)(E). Unless otherwise specified in paragraph (a)(5) of this section, regulated species or ocean pout catch by common pool and sector vessels shall be deducted from the sub-ACL/ACE allocated pursuant to this paragraph (a)(4)(iii)(E)(*2*) for the purposes of determining whether adjustments to common pool measures are necessary, pursuant to the common pool AMs specified in § 648.82(n), or whether sector ACE overages must be deducted, pursuant to § 648.87(b)(1)(iii).

(*3*) *Revisions to commercial and recreational allocations.* Distribution of the ACL for each stock available to the NE multispecies fishery between and among commercial and recreational components of the fishery may be implemented through a framework adjustment pursuant to this section. Any changes to the distribution of ACLs to the NE multispecies fishery shall not affect the implementation of AMs based upon the distribution in effect at the time of the overage that triggered the AM.

(iv) *ACL monitoring*—(A) *Landings.* For the purposes of monitoring the catch of regulated species or ocean pout towards the harvest of ACLs and other, non-specified sub-components of the ACLs specified in paragraph (a)(4) of this section, the reporting requirements specified in this part, including dealer reports, VTRs, VMS catch reports, sector catch reports, and other available information shall be used to identify and apportion regulated species or ocean pout landings by stock area.

(B) *Discards.* Unless otherwise specified in this paragraph (a)(4)(iv)(B), regulated species or ocean pout discards shall be monitored through the use of VTRs, observer data, VMS catch reports, and other available information, as specified in this part. Regulated species or ocean pout discards by vessels on a sector trip shall be monitored pursuant to paragraph (b)(1)(v)(A) of this section.

(v) *Adjustments to ACLs.* The Council may elect to revise the ACL for any regulated species or ocean pout stock in the second fishing year following a biennial review to account for any overages of an ACL in year one that may result in overfishing for a particular stock. Any adjustments to the ACLs in year two will be implemented pursuant to the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section.

(5) *AMs.* Except as specified in paragraphs (a)(4)(iii)(A) and (D) of this section, if any of the ACLs specified in paragraph (a)(4) of this section are exceeded based upon available catch information, the AMs specified in paragraphs (a)(5)(i) and (ii) of this section shall take effect in the following fishing year, or as soon as practicable, thereafter, once catch data for all affected fisheries are available, as applicable.

(i) *AMs for the NE multispecies commercial and recreational fisheries.* If the catch of regulated species or ocean pout by a sub-component of the NE multispecies fishery (i.e., common pool vessels, sector vessels, or private recreational and charter/party vessels) exceeds the amount allocated to each sub-component, as specified in paragraph (a)(4)(iii)(E) of this section, then the applicable AM for that sub-component of the fishery shall take effect, pursuant to paragraphs (a)(5)(i)(A) through (C) of this section. In determining the applicability of AMs specified for a sub-component of the NE multispecies fishery in paragraphs (a)(5)(i)(A) through (C) of this section, the Regional Administrator shall consider available information regarding the catch of regulated species and ocean pout by each sub-component of the NE multispecies fishery, plus each sub-component's share of any overage of the overall ACL for a particular stock caused by excessive catch by vessels outside of the FMP, exempted fisheries, or the Atlantic sea scallop fishery, as specified in this paragraph (a)(5), as appropriate.

(A) *Excessive catch by common pool vessels.* If the catch of regulated species and ocean pout by common pool vessels exceeds the amount of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then the AMs described in § 648.82(n) shall take effect. If such catch does not exceed the portion of the ACL specified for common pool vessels pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then no AMs shall take effect for common pool vessels.

(B) *Excessive catch by sector vessels.* If the catch of regulated species and ocean pout by sector vessels exceeds the amount of the ACL specified for sector vessels pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then the AMs described in § 648.87(b)(1)(iii) shall take effect. For the purposes of this paragraph (a)(5)(i)(B), the catch of regulated species and ocean pout for each sector approved pursuant to § 648.87 shall be based upon the catch of vessels participating in each approved sector. If such catch does not exceed the portion of the ACL specified for an individual sector pursuant to paragraph (a)(4)(iii)(E)(*2*) of this section, then no AMs shall take effect for that sector.

(C) *Excessive catch by the NE multispecies recreational fishery.* If the catch of regulated species and ocean pout by private recreational and charter/party vessels exceeds the amount of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, then the AMs described in § 648.89(f) shall take effect. If such catch does not exceed the portion of the ACL specified for the recreational fishery pursuant to paragraph (a)(4)(iii)(E)(*1*) of this section, then no AMs shall take effect for the recreational fishery.

(ii) *AMs if the overall ACL for a regulated species or ocean pout stock is exceeded.* If the catch of any stock of regulated species or ocean pout by vessels fishing outside of the NE multispecies fishery, including the catch of regulated species or ocean pout by vessels fishing in state waters outside of the FMP, or in exempted fisheries, as defined in this part, or the catch of yellowtail flounder by the Atlantic sea scallop fishery, exceeds the sub-component of the ACL for that stock specified for such fisheries pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, and the overall ACL for that stock is exceeded, then the amount of the overage of the overall ACL for that stock shall be distributed among components of the NE multispecies fishery based upon each component's share of that stock's ACL available to the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section. Each component's share of the ACL overage for a particular stock would be then added to the catch of that stock by each component of the NE multispecies fishery to determine if the resulting sum of catch of that stock for each component of the fishery exceeds that individual component's share of that stock's ACL available to the NE multispecies fishery. If the total catch of that stock by any component of the NE multispecies fishery exceeds the amount of the ACL specified for that component of the NE multispecies fishery pursuant to paragraph (a)(4)(iii)(E) of this section, then the AMs specified in paragraphs (a)(5)(i)(A) through (C) of this section shall take effect, as applicable. If the catch of any stock of regulated species or ocean pout by vessels outside of the FMP exceeds the sub-component of the ACL for that stock specified pursuant to paragraphs (a)(4)(iii)(A) through (C) of this section, but the overall ACL for that stock is not exceeded, even after

consideration of the catch of that stock by other sub-components of the fishery, then the AMs specified in this paragraph (a)(5)(ii) shall not take effect.

(6) *Specifications process*—(i) *PDT recommendations.* Unless otherwise developed pursuant to the biennial review process specified in paragraph (a)(2) of this section, the PDT shall develop recommendations for setting ACLs for each regulated species or ocean pout, including ACLs for stocks managed by the Understanding; revising rebuilding programs and associated management measures; or modifying AMs for consideration by the Council's Groundfish Oversight Committee based upon the SAFE report prepared pursuant to paragraph (a)(1) of this section. If the Council determines, based on information provided by the PDT or other stock-related information, that the ACLs should be adjusted between biennial reviews, it can do so through the same process outlined in this section during the interim year.

(ii) *Guidelines.* As the basis for its recommendations under paragraph (a)(5)(i) of this section, the PDT shall review available data pertaining to: Commercial and recreational catch data; current estimates of fishing mortality; discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information.

(iii) *Groundfish Oversight Committee recommendations.* Based on the PDT's recommendations and any public comment received, the Groundfish Oversight Committee shall recommend to the Council appropriate specifications a period of at least 1 year. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations and publish proposed specifications in a manner consistent with the Administrative Procedure Act. If the proposed specifications differ from those recommended by the Council, the reasons for any differences shall be clearly stated.

(iv) *Analysis.* Any specifications package developed pursuant to this paragraph (a)(5) shall be supported by the appropriate NEPA analysis, which shall be made available for public comment.

(c) * * *

(1) * * *

(i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, sector requirements, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, changes to the Northeast Region SBRM, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area, and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs).

* * * * *

[FR Doc. 2010–7233 Filed 3–31–10; 4:15 pm]

BILLING CODE 3510–22–P

Federal Register

Friday,
April 9, 2010

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 44; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0151–02]

RIN 0648–AY29

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 44

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

ACTION: Final rule.

SUMMARY: This final rule implements measures approved under Framework Adjustment 44 (FW 44) to the Northeast (NE) Multispecies Fishery Management Plan (FMP), including specifications for the FMP for fishing years (FY) 2010–2012. FW 44 is implemented in this rule in conjunction with approved Amendment 16 measures, as well as with approved sector operations plans authorized under the FMP. Specifically, FW 44 modifies the Gulf of Maine (GOM) cod and pollock trip limits implemented in Amendment 16; provides the Administrator, Northeast Region, NMFS (Regional Administrator) authority to implement inseason trip limits and/or differential day-at-sea (DAS) counting for any groundfish stock in order to prevent catch from exceeding the Annual Catch Limit (ACL); and specifies Overfishing Levels (OFLs), Acceptable Biological Catch levels (ABCs), and ACLs for all 20 groundfish stocks in the FMP for FY 2010 through 2012, as well as the Total Allowable Catches (TACs) for transboundary Georges Bank (GB) stocks. Pursuant to current Regional Administrator authority under the FMP, this action also allocates zero trips to the Closed Area II (CA II) Yellowtail Flounder Special Access Program (SAP); limits the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels; delays the opening of the Eastern U.S./Canada Area for trawl vessels; and implements a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). Finally, this rule makes technical corrections to Amendment 16 regulations.

DATES: Effective May 1, 2010, except for §§ 648.82(n)(1)(ii) and 648.87(b)(1)(ii)(B), which are effective May 2, 2010.

ADDRESSES: Copies of FW 44, its Regulatory Impact Review (RIR), and the Environmental Assessment (EA) and addendum are available from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Mill 2, Newburyport, MA 01950. Copies of FW 44 EA and addendum may be found at the following Internet address: *http://www.nero.noaa.gov/nero/regs/frdoc/10/10MultiFW44EA.pdf*.

NMFS prepared a Final Regulatory Flexibility Act Analysis (FRFA), which is contained in the Classification section of this rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: This final rule implements measures and specifications in FW 44; measures to manage the NE multispecies fishery in FY 2010 implemented under authority under the FMP; and technical corrections to the regulations implementing the FMP, implemented under Secretarial authority. A proposed rule for this action was published on February 1, 2010 (75 FR 5016), with public comments accepted through March 1, 2010. The Council developed FW 44 in order to specify catch levels for FY 2010–2012, as well as to address concerns that some assumptions inherent in Amendment 16 may be invalid, and therefore Amendment 16 measures may not in themselves, be restrictive enough to prevent ACLs from being exceeded (particularly for GOM cod and pollock). The details of the development of FW 44 were contained in the preamble of the proposed rule and are not repeated here. Some of the specified catch levels in this final rule are different from those in the proposed rule, as explain below in the sections explaining the catch specifications. In addition, these catch levels may be further modified through a subsequent rulemaking after the start of FY 2010, as explained under the description of measures and specifications in this preamble. The relationship of this action to other final regulations being implemented concurrently for the FMP is as follows: Amendment 16 is a major modification to the FMP and implements a suite of management measures to continue the rebuilding of groundfish stocks; an expanded sector management program; and a process for biennial specification of OFLs, ABCs, and ACLs. The Secretary of Commerce partially approved Amendment 16 on January 21, 2010; a proposed rule for Amendment 16 was published on December 31, 2009 (74 FR 69382); and publication of a final rule for Amendment 16 is anticipated, with an effective date of May 1, 2010.

As noted in Amendment 16, in order to implement regulations efficiently, this final rule implements certain regulations under the joint authority of Amendment 16 and FW 44 because, in some cases, Amendment 16 and FW 44 revise the same regulatory text. For clarity, portions of the regulatory text in this final rule reflect proposed regulatory text changes in the Amendment 16 proposed rule, as further modified by FW 44.

FW 44 implements the following management measures and specifications:

Management Measures

1. Regional Administrator Authority

This final rule authorizes the Regional Administrator to modify landing limits for any NE multispecies stock and/or DAS counting rates at any time during the FY to reduce the likelihood that ACLs of allocated NE multispecies stocks would be exceeded, or to facilitate the harvesting of ACLs. For example, if, based on available information regarding catch of a particular stock, NMFS projects that an ACL will be exceeded prior to the end of the FY, the Regional Administrator may implement a more restrictive landing limit for that stock that would be effective for the remainder of the FY, unless further modified. Alternatively, for the same stock, the Regional Administrator could instead decide to implement a more restrictive DAS counting rate in the geographic area that pertains to the stock (or implement a change to both a possession limit and DAS counting rate). A modification to the DAS counting rate, under this example, would apply to one or more of the differential DAS counting areas implemented by Amendment 16 that correspond to the pertinent stock(s) (*e.g.,* Inshore GOM Differential DAS Area; Offshore GOM Differential DAS Area; Inshore GB Differential DAS Area; Offshore GB Differential DAS Area; and Southern New England/Mid-Atlantic (SNE/MA) Differential DAS Area). This inseason adjustment could be implemented by the Regional Administrator even on the first day of the FY. Thus, the Regional Administrator could adjust the inseason DAS counting rate in addition to the adjustment to the DAS counting rate that would be triggered under Amendment 16 as an accountability measure (AM), beginning in FY 2011, in response to exceeding an ACL during the previous FY.

Although the measures in this rule do not include any implemented under this new Regional Administrator authority

for the beginning of FY 2010, NMFS is nonetheless concerned that the ACLs for certain stocks may be exceeded in FY 2010, which would trigger AMs in FY 2011. To address the concern for stocks such as GOM winter flounder and GB cod (stocks for which the proposed ACLs are substantially less than recent catch levels), NMFS will monitor catch rates closely and be prepared to implement effort restrictions under this Regional Administrator authority early in FY 2010, if necessary.

2. Possession Limits

This final rule modifies the Amendment 16 trip limits for GOM cod and implements a trip limit for pollock to reduce the likelihood of exceeding the ACLs for these two stocks. Specifically, for limited access DAS vessels, FW 44 replaces the Amendment 16 GOM cod limit of 2,000 lb (907.2 kg) up to 12,000 lb (5,443.2 kg)/trip, with the status quo GOM cod trip limit of 800 lb (362.9 kg)/DAS, up to 4,000 lb (1,818.4 kg)/trip. For vessels with a limited access Handgear A or open access Handgear B permit, FW 44 replaces the Amendment 16 cod limits of 750 lb (340.2 kg) and 200 lb (90.7 kg), respectively, with the status quo trip limits of 300 lb (136.1 kg) and 75 lb (34 kg) per trip. In addition, FW 44 implements a new trip limit for pollock of 1,000 lb (453.6 kg)/DAS, up to 10,000 lb (4,536.0 kg)/trip (Amendment 16 does not contain a trip limit for pollock).

3. Requirement for Limited Access Scallop Vessels to Land Yellowtail Flounder

In conjunction with the allocations of yellowtail flounder to the scallop fishery (described below under "specifications"), vessels with a Federal limited access scallop permit are required to land all legal-sized yellowtail flounder to reduce discarding. This provision may also provide an incentive for scallop vessels to minimize the catch of yellowtail flounder, if landing yellowtail flounder is not cost-effective.

Specifications

Consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements regarding catch limits, and pursuant to the Amendment 16 process of developing such limits, this final rule specifies OFLs, ABCs, and ACLs for all stocks covered by the NE Multispecies FMP, as well as incidental catch TACs for FY 2010–2012. In addition, pursuant to current FMP requirements and authority, this rule specifies annual U.S./Canada Management Area TACs for FY 2010. Lastly, under existing Regional Administrator authority to modify management measures for the U.S./Canada Management Area, as well as to modify certain SAP regulations for FY 2010, this final rule delays the opening of the Eastern U.S./Canada Area for trawl vessels for FY 2010; allocates zero trips for the CA II Yellowtail Flounder SAP; limits the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels; and implements a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). The specifications and management measures implemented in this final rule are described in further detail below.

This final rule implements the following specifications:

1. OFLs and ABCs

Table 1 contains OFLs and ABCs for FY 2010–2012, based on Groundfish Assessment Review Meeting III (GARM III) stock assessments (2008), for all stocks with the exception of GB yellowtail flounder, for which the ABC is based on the Transboundary Resource Assessment Committee (TRAC) stock assessment of 2009. It is anticipated that the FY 2011 and 2012 values of the GB yellowtail flounder ABC will be revised during 2010 and 2011, respectively, based on new transboundary stock assessments. The OFLs and ABCs for FY 2012 will likely be revised during the next biennial adjustment process (during 2011), but are being specified at this time in the event that the next biennial adjustment process does not result in the timely implementation of 2012 catch specifications.

The OFL value for a stock is calculated using the estimated stock size for a particular year, and represents the amount of catch associated with Fmsy, *i.e.,* the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield (MSY). The ABCs are those recommended by the Council's Scientific and Statistical Committee (SSC), and are lower than the OFLs in order to take into account scientific uncertainty in setting catch limits. The ABC value for a stock is calculated using the estimated stock size for a particular year, and for all stocks, with the exception of SNE/MA winter flounder, represents the amount of catch associated with 75 percent of Fmsy (or 75 percent of recent landings as a proxy for Fmsy), or the F rate required to rebuild the stock within the defined rebuilding time period (Frebuild), whichever is lower. For SNE/MA winter flounder, the ABC was calculated using the F expected to result from management measures designed to achieve an F as close to zero as practicable. This ABC is consistent with the SSC recommendation that, for stocks that cannot rebuild to Bmsy (the biomass associated with maximum sustainable yield) in the specified rebuilding period, even with no fishing, the ABC should be based on incidental bycatch, including a reduction in bycatch rate (*i.e.,* the proportion of the stock caught as bycatch). The ABC values for GOM winter flounder were revised (increased slightly) after the publication of the proposed rule to reflect corrected data.

According to FW 44, for all stocks, with the exception of those with index-based stock assessments (where no information was provided), the probability that the ABC catch would result in overfishing (F>Fmsy) is less than 20 percent. The highest probability of overfishing is associated with GB winter flounder (0.184, 0.191, and 0.199 for 2010, 2011, and 2012, respectively). The ABC values for GB cod and GB haddock for FY 2011 and 2012 are maximum values, because no Canadian catch has been deducted from the overall ABC, and therefore will likely be specified again in conjunction with the 2011 and 2012 U.S./Canada TACs. The FY 2011 and 2012 U.S. ABCs for GB cod and GB haddock will, therefore, be lower than the values in Table 1 in order to take into account Canadian catch. For example, for FY 2010, the amount of reduction to the overall ABC for GB cod and GB haddock is 1,012 mt and 17,612 mt, respectively, which represent the Canadian portion of the shared TACs (Table 7).

TABLE 1—OFLS AND ABCS FOR FY 2010–2012

** Stock	OFL			U.S. ABC		
	2010	2011	2012	2010	2011	2012
GB cod	6,272	7,311	8,090	3,800	*5,616	*6,214
GOM cod	11,089	11,715	11,742	8,530	9,012	9,018

TABLE 1—OFLS AND ABCS FOR FY 2010–2012—Continued

** Stock	OFL			U.S. ABC		
	2010	2011	2012	2010	2011	2012
GB hadk	80,007	59,948	51,150	44,903	* 46,784	* 39,846
GOM hadk	1,617	1,536	1,296	1,265	1,206	1,013
GB ytail	5,148	6,083	7,094	1,200	1,081	1,226
SNE ytail	1,553	2,174	3,166	493	687	1,003
CC ytail	1,124	1,355	1,508	863	1,041	1,159
Plaice	4,110	4,483	4,727	3,156	3,444	3,632
Witch	1,239	1,792	2,141	994	1,369	1,639
GB winter	2,660	2,886	3,297	2,052	2,224	2,543
GOM winter	441	570	685	239	239	239
SNE winter	1,568	2,117	2,830	644	897	1,198
Redfish	9,899	10,903	12,036	7,586	8,356	9,224
White hake	4,130	4,805	5,306	2,832	3,295	3,638
Pollock	5,085	5,085	5,085	3,293	3,293	3,293
N. window	225	225	225	169	169	169
S. window	317	317	317	237	237	237
Ocean pout	361	361	361	271	271	271
Halibut	119	130	143	71	78	85
Wolffish	92	92	92	83	83	83

** GB = Georges Bank; GOM = Gulf of Maine; hadk = haddock; ytail = yellowtail flounder; SNE = Southern New England/Mid-Atlantic; CC = Cape Cod/GOM; plaice = American plaice; witch = witch flounder; winter = winter flounder; N = north; S = south; window = windowpane flounder.
* Preliminary.

2. ACLs

Pursuant to Magnuson-Stevens Act requirements and Amendment 16, the Council recommended ACLs that are lower than the ABCs, in order to account for management uncertainty. The total ACL for a stock represents the catch limit for a particular year, considering both biological and management uncertainty, and the limit includes all sources of catch (landed and discards) and all fisheries (commercial and recreational groundfish fishery, State-waters catch, and non-groundfish fisheries). The division of a single ABC value for each stock (for a particular FY) into sub-ACLs, and ACL-subcomponents, accomplishes three objectives: (1) The ABC is sub-divided to account for all components of the fishery and sources of fishing mortality; (2) allocations are made for certain fisheries; and (3) management uncertainty is taken into account.

For FW 44, the ABC was subdivided into fishery components on a stock-specific manner, prior to the consideration of management uncertainty. The following components of the fishery are reflected in the total ABC: Canadian share/allowance (expected Canadian catch); U.S. ABC (available to the U.S. fishery after accounting for Canadian catch); State waters (portion of ABC expected to be caught from State waters outside Federal management); other sub-components (expected catch by other non-groundfish fisheries); scallop fishery; mid-water trawl fishery; commercial groundfish fishery; and recreational groundfish fishery. The commercial groundfish sub-ACL is further divided into the non-sector (common pool vessels) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors as of January 22, 2010, and the cumulative Potential Sector Contributions (PSCs) associated with those sectors.

As indicated in the proposed rule for sector operations for FY 2010 (74 FR 68015, December 22, 2009), sector rosters will not be finalized until May 1, 2010, because vessel owners that have indicated intent to join sectors have until April 30, 2010, to drop out of a sector and fish in the common pool. Therefore, it is likely that the FY 2010 sector sub-ACL, which is comprised of the cumulative PSCs of all enrolled sector members, will be reduced and the common pool sub-ACL will increase after the effective date of this final rule specifying ACLs. In such a case, NMFS will make the changes consistent with the Administrative Procedure Act (APA) and other applicable law.

Despite such changes, the groundfish sub-ACL (common pool sub-ACL, plus the sector sub-ACL, plus the recreational sub-ACL) is not likely to change. Based on the final rosters, NMFS intends to publish a rule in early May 2010 to modify the common pool and sector sub-ACLs and notify the public, if these numbers change. It is almost certain that all of the FY 2011 and 2012 sub-ACLs for the common pool and sectors will change and be re-specified prior to FY 2011 and 2012 due to annual changes to the sector rosters. Furthermore, due to the need to re-specify the U.S. ABCs for GB cod and GB haddock as described above, all sub-components of the ABCs for GB cod and GB haddock will be re-specified for FY 2011 and 2012, when information on the Canadian TACs is available.

As noted above, the common pool sub-ACL and sector sub-ACL values in this final rule are based on the sector rosters submitted to NMFS as of January 22, 2010. In contrast, the catch levels contained in the proposed rule for this action and in the EA were based on rosters as of September 1, 2009. The sector sub-ACLs in this final rule are, on average, 3 percent larger than those specified in the proposed rule, due to the increase in the number of sector members between September 1, 2009, and January 22, 2010 (*see* the FY 2010 sector final rule for further details on this subject).

The concept of management uncertainty for the purpose of developing ACLs is described in the preamble to the proposed rule and is not repeated here.

Several components of the FW 44 ACLs are notable, because they are atypical. For example, yellowtail flounder is allocated to the scallop fishery in recognition of the importance of yellowtail flounder to the prosecution of the scallop fishery. For FY 2010, the scallop fishery will be allocated 100 percent of the estimated yellowtail flounder (for GB and CC/GOM stocks) that is associated with the projected scallop catch in FY 2010, although this allocation is not a "hard" TAC (there is no triggered management action when

the TAC is caught). For FY 2011 and 2012, the scallop fishery is allocated 90 percent of the yellowtail flounder the scallop fishery is projected to catch (Table 2). Reducing the yellowtail flounder allocation to 90 percent of the yellowtail flounder that the scallop fishery is expected to catch is intended to provide incentive for the scallop fishermen to reduce bycatch of yellowtail flounder.

The allocations of yellowtail flounder to the scallop fishery implemented by the final rule are greater than the amounts specified in the FW 44 proposed rule. The February 1, 2010, proposed rule for FW 44 included scallop allocations based upon the initial version of Framework Adjustment 21 (FW 21) to the Atlantic Sea Scallop FMP, which included measures that determine the amount of scallops that will be caught during FY 2010. At the time the FW 44 proposed rule was finalized, it was known that the Council would reconsider FW 21, and the preamble noted that the Council could alter the allocations to the scallop fishery. At its January 27, 2010, meeting, the Council reconsidered FW 21, which includes measures that determine the amount of scallops that can be caught during FY 2010–2012. Because the FW 44 yellowtail flounder allocation to the scallop fishery is based on the amount of projected scallop harvest, the modification to FW 21 affected the FW 44 allocation of yellowtail flounder to both the scallop and the NE multispecies fisheries. The Council increased the projected scallop catch under FW 21 and, therefore, the amount of GB and SNE/MA yellowtail flounder allocated to the scallop fishery for FY 2010–2012 through this final rule is increased. For example, for FY 2010, the scallop allocations for GB and SNE/MA yellowtail flounder are increased, by 36 mt and 24 mt, respectively. As a result, the groundfish sub-ACLs are reduced by 35 mt and 22 mt for GB and SNE/MA, respectively. The amount of reduction in the yellowtail flounder groundfish sub-ACLs is less than the amount of increased allocation to the scallop fishery because modifying the allocation of yellowtail flounder to the scallop fishery alters the amount of yellowtail flounder that is deducted to account for management uncertainty, due to the order of the calculations. Further, for this same reason, the total ACLs implemented through this final rule are slightly larger than in the proposed rule. Specifically, the total ACLs were increased by 1 mt and 2 mt, for GB and SNE/MA, respectively. It should be noted that in Table 3 of the FW 44 proposed rule, the groundfish sub-ACL for SNE yellowtail flounder was incorrectly proposed as 322 mt instead of 332 mt, due to a typographical error.

The Council prepared an addendum to the EA that analyzed the impacts of the modified scallop and groundfish allocations of GB and SNE/MA yellowtail flounder. These impacts are described in the Classification section in this preamble.

No specific allocation of Cape Cod (CC)/Gulf of Maine (GOM) yellowtail flounder is made to the scallop fishery because the incidental catches of this stock by the scallop fishery are relatively low. Catches of this stock are considered part of the "other sub-component" of the ACL.

The FY 2010 yellowtail flounder allocations to the scallop fishery are characterized as ACL sub-components (no short-term associated AMs), and the FY 2011 and 2012 allocations are characterized as sub-ACLs. Under the current Atlantic Sea Scallop FMP, if the scallop fishery harvests in excess of the yellowtail flounder sub-components specified for the fishery for FY 2010, no scallop management measures will be triggered. The Council intends to develop AMs for the Atlantic Sea Scallop FMP that would be responsive to yellowtail flounder catches in excess of the sub-ACL, beginning in FY 2011. The precise mechanism and scope of future scallop AMs is unknown. Current regulations set a cap on the amount of yellowtail flounder that may be harvested from the scallop access areas within the SNE/MA and GB yellowtail flounder stock areas. Specifically, current regulations cap yellowtail flounder harvest from scallop access areas at 10 percent of the "total TAC" for each of the stock areas. In light of the specified ACL components, "total TAC" means "total ACL", *i.e.,* 10 percent of 1,169 mt (117 mt) and 468 mt (47 mt) for FY 2010 for GB and SNE/MA yellowtail flounder, respectively (*see* Table 3).

Under this final rule, the mid-water trawl fishery is allocated 0.2 percent of the U.S. ABC for GB and GOM haddock. The values for the allocations to the mid-water trawl fishery listed in Table 2 are slightly less than 0.2 percent, due to the 7-percent reduction of these allocations to account for management uncertainty for this stock. The calculation of the haddock allocations were described in the preamble of the proposed rule, and are not repeated here. All of the haddock allocations to the mid-water trawl fishery are characterized as sub-ACLs (associated with AMs, as explained below). A percentage of the U.S. ABC for GOM haddock and GOM cod will be allocated to the recreational fishery, based on a split of ABC among commercial and recreational components of the fishery (72.5 percent and 27.5 percent for haddock; 66.3 percent and 33.7 percent for cod, respectively) (Table 2). All the recreational allocations to the groundfish fishery are characterized as sub-ACLs.

TABLE 2—ALLOCATIONS TO THE SCALLOP FISHERY, MID-WATER TRAWL FISHERY, AND RECREATIONAL GROUNDFISH FISHERY (MT)

	FY 2010	FY 2011	FY 2012
Scallop Fishery			
Yellowtail flounder stock			
GB	146	201	307
SNE/MA	135	82	127
Mid-Water Trawl Fishery			
Haddock stock			
GB	84	87	74
GOM	2	2	2
Recreational Groundfish Fishery			
GOM stock			

TABLE 2—ALLOCATIONS TO THE SCALLOP FISHERY, MID-WATER TRAWL FISHERY, AND RECREATIONAL GROUNDFISH FISHERY (MT)—Continued

	FY 2010	FY 2011	FY 2012
GOM cod	2,673	2,824	2,826
GOM haddock	324	308	259

For most stocks, the percentage of the ABC deducted for anticipated catch from State waters is between 1 and 10 percent, with the exception of Atlantic halibut and GOM winter flounder, for which 50 percent and 35 percent, respectively, are deducted from the ABC.

Amendment 16 is implementing a system in which a sub-ACL has an AM that will be triggered if the catch exceeds the specified amount. In contrast, an ACL-subcomponent does not have an automatic short-term AM that is triggered if the catch exceeds the specified amount, although there will be accountability through the evaluation of the catch of all sub-components during the next biennial adjustment to determine if the size of the ACL-subcomponents needs to be adjusted for subsequent FYs. However, if the total catch exceeds the total ACL, AMs will be triggered, as explained in detail in Amendment 16. Tables 3, 4, and 5 contain the total ACLs, sub-ACLs, and ACL-subcomponents for FY 2010, 2011, and 2012, respectively (with the exception of the scallop and mid-water trawl components in Table 2). The sector sub-ACLs for five stocks are zero, because no possession of these stocks is allowed for either common-pool or sector vessels. As explained above, the groundfish sub-ACLs and total ACLs for GB and SNE/MA yellowtail flounder have been revised from the proposed rule to reflect the Council's decision to reconsider scallop management measures in FW 21. Secondly, the sector sub-ACLs and common pool sub-ACLs for all stocks are likely to decrease and increase, respectively, from the values specified in this final rule, due to vessels dropping out of sectors during April, prior to the start of FY 2010. If vessels drop out of sectors prior to May 1, 2010, a new final rule will be published, and NE multispecies permit holders will be notified. Lastly, the values for the total ACL and groundfish sub-ACL for GOM winter flounder were revised (increased slightly) after the publication of the proposed rule to reflect corrected data.

TABLE 3—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2010 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	3,620	3,430	103	3,327	38	152
GOM cod	8,088	7,240	178	4,389	566	283
GB hadk	42,768	40,440	202	40,238	449	1,796
GOM hadk	1,197	1,149	13	812	9	37
GB ytail	1,170	964	21	943	0	60
SNE ytail	470	310	63	247	5	20
CC ytail	822	779	31	748	9	35
Plaice	3,006	2,848	71	2,777	32	126
Witch	899	852	19	833	9	38
GB winter	1,955	1,852	26	1,826	0	103
GOM winter	231	159	20	138	60	12
SNE winter	605	520	520	0	53	32
Redfish	7,226	6,848	62	6,786	76	303
White hake	2,697	2,566	44	2,522	28	113
Pollock	3,148	2,748	47	2,701	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	69	30	30	0	36	4
Wolffish	77	73	73	0	1	3

* *See* Table 2 for allocations to scallop, mid-water trawl, and recreational fisheries.

TABLE 4—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2011 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	5,349	5,068	152	4,916	56	225
GOM cod	8,545	7,649	188	4,637	597	299
GB hadk	44,560	42,134	211	41,923	468	1,871
GOM hadk	1,141	1,095	13	774	9	35
GB ytail	1,050	795	17	778	0	54
SNE ytail	641	524	107	417	7	27
CC ytail	992	940	38	902	10	42
Plaice	3,280	3,108	78	3,030	34	138
Witch	1,304	1,236	27	1,209	14	55
GB winter	2,118	2,007	28	1,979	0	111

TABLE 4—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2011 (MT) *—Continued

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GOM winter	231	159	20	138	60	12
SNE winter	842	726	726	0	72	45
Redfish	7,959	7,541	68	7,473	84	334
White hake	3,138	2,566	44	2,522	33	132
Pollock	3,148	2,974	51	2,923	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	76	33	33	0	39	4
Wolffish	77	73	73	0	1	3

* *See* Table 2 for allocations to scallop, mid-water trawl and recreational fisheries.

TABLE 5—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2012 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	5,919	5,608	168	5,440	62	249
GOM cod	8,551	7,654	188	4,640	598	299
GB hadk	37,952	35,885	179	35,706	398	1,594
GOM hadk	959	920	11	650	7	29
GB ytail	1,191	823	18	805	0	61
SNE ytail	936	759	155	604	10	40
CC ytail	1,104	1,046	42	1,004	12	46
Plaice	3,459	3,278	82	3,196	36	145
Witch	1,561	1,479	33	1,446	16	66
GB winter	2,422	2,295	32	2,263	0	127
GOM winter	231	159	20	138	60	12
SNE winter	1,125	969	969	0	96	60
Redfish	8,786	8,325	75	8,250	92	369
White hake	3,465	3,283	56	3,227	36	146
Pollock	3,148	2,748	47	2,701	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	83	36	36	0	43	4
Wolffish	77	73	73	0	1	3

* *See* Table 2 for allocations to scallop, mid-water trawl, and recreational fisheries.

3. Revisions to Incidental Catch TACs and Allocations to Special Management Programs

This final rule specifies incidental catch TACs applicable to the NE multispecies Special Management Programs for FY 2010–2012, based on the ACLs, the FMP, and advice from the Council. Incidental catch TACs are specified for certain stocks of concern for common pool vessels fishing in the Special Management Programs, in order to limit the amount of catch of stocks of concern that can be caught under such programs. A stock of concern is defined as a stock that is in an overfished condition or subject to overfishing. The incidental catch TACs below are consistent with the Amendment 16 changes to the allocation of incidental catch TACs among Special Management Programs, with four exceptions, as explained below. Pursuant to Amendment 16, new incidental catch TACs are required for GOM winter flounder and pollock, because they are now considered stocks of concern. Although American plaice is technically no longer a stock of concern, Amendment 16 retains the incidental catch TAC for this stock because the stock is far from rebuilt. The incidental catch TACs apply to catch (landings and discards) caught under Category B DAS (either Regular or Reserve B DAS) on trips that end on a Category B DAS. For trips that start under a Category B DAS, the catch of stocks for which incidental catch TACs are specified and then flip to a Category A DAS does not accrue toward such TACs.

The information in Tables 6, 7, and 8 regarding incidental catch TACs differs from the proposed rule for two reasons. For FY 2010, the use of Category B DAS will be prohibited by vessels fishing in the Eastern U.S./Canada Haddock SAP, as explained in section 6 of this preamble; therefore, incidental catch TACs will not be allocated to this SAP for FY 2010, in order to maximize opportunity to fish in the Special Management Programs. Based on historic catch rates in the Special Management Programs, the incidental catch TAC for GB cod is reallocated to the CA I Hook Gear Haddock SAP, and the incidental catch TACs for GB yellowtail flounder, GB winter flounder, and pollock are reallocated to the Regular B DAS Program. Although the proposed rule included the prohibition on the use of Category B DAS in this SAP, it did not propose reallocation of any incidental catch TACs. Subsequent to the proposed rule, NMFS and Council staff discussed optimization of available incidental catch TAC, and the Council expressed support for this reallocation in its February 4, 2010, letter to the Regional Administrator. Secondly, the FY 2010–2012 values for the incidental catch TACs for GB and SNE yellowtail

flounder were revised because the groundfish sub-ACLs and total ACLs for GB and SNE/MA yellowtail flounder were revised from the proposed rule to reflect the Council's decision to reconsider scallop management measures in FW 21 (as explained above in section 2).

Due to the future need to re-specify the U.S. ABC for GB cod to reflect available information on Canadian catch, the incidental catch TAC for GB cod will be re-specified for FY 2011 and 2012, when information on the Canadian TACs is available. The incidental catch TACs, by stock, based on common pool sub-ACLs are shown in Table 6.

TABLE 6—INCIDENTAL CATCH TACS BY STOCK FOR FY 2010–2010 (MT)

Stock	Percentage of sub-ACL	2010 incidental catch TAC	2011 incidental catch TAC	2012 incidental catch TAC
GB cod	2	3.5	5.1	5.7
GOM cod	1	3.4	3.6	3.6
GB yellowtail	2	0.4	0.3	0.4
CC/GOM yellowtail	1	0.5	0.6	0.7
SNE/MA yellowtail	1	0.6	1.1	1.6
Plaice	5	9.2	10.0	10.6
Witch flounder	5	2.1	3.1	3.7
SNE/MA winter flounder	1	5.2	7.3	9.7
GB winter	2	1.1	1.2	1.4
White hake	2	2.4	2.8	3.1
Pollock	2	2.4	2.4	2.4

TABLE 7—ALLOCATION OF INCIDENTAL CATCH TACS AMONG SPECIAL MANAGEMENT PROGRAMS

Stock	Regular B DAS program	Closed area I Hook Gear Haddock SAP	Eastern U.S./Canada Haddock SAP
GB cod	50%	50%	0%
GOM cod	100	na	Na
GB yellowtail	100	na	0%
CC/GOM yellowtail	100	na	Na
SNE/MA yellowtail	100	na	Na
Plaice	100	na	Na
Witch flounder	100	na	na
SNE/MA winter flounder	100	na	Na
GB winter	100	na	0%
White hake	100	na	Na
Pollock	84	16%	0%

TABLE 8—INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS BY STOCK FOR FY 2010–2012 (MT)

Stock	Regular B DAS program			Closed area I Hook Gear Haddock SAP			Eastern U.S./Canada Haddock SAP		
	2010	2011	2012	2010	2011	2012	2010	2011	2012
GB cod	1.75	2.6	2.8	1.75	0.8	0.9	0	1.7	1.9
GOM cod	3.4	3.6	3.6	.....	.....	.....	.....	.....	.....
GB yellowtail	0.4	0.5	0.5	.....	.....	.....	0	0.5	0.5
CC/GOM yellowtail	0.5	0.6	0.7	.....	.....	.....	.....	.....	.....
SNE/MA yellowtail	0.9	1.4	2.1	.....	.....	.....	.....	.....	.....
Plaice	9.2	10.0	10.6	.....	.....	.....	.....	.....	.....
Witch flounder	2.1	3.1	3.7	.....	.....	.....	.....	.....	.....
SNE/MA winter flounder	1.1	1.2	1.4	.....	.....	.....	.....	.....	.....
GB winter	1.1	1.4	1.6	.....	.....	.....	0	1.4	1.6
White hake	5.2	7.3	9.7	.....	.....	.....	.....	.....	.....
Pollock	2.0	1.2	1.2	0.4	0.4	0.4	0	0.8	0.8

4. Annual Specifications for U.S./Canada Management Area

TACs for GB transboundary stocks (*i.e.,* GB stocks shared with Canada: Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder) were specified in accordance with the FMP, and the U.S./Canada Resource Sharing Understanding (Understanding). The FMP specifies a procedure for setting these annual hard TAC levels that apply to the U.S./Canada Management Area. The proposed rule contained a detailed description of this procedure, as well as the harvest strategy of the Understanding. In September 2009, the Transboundary Management Guidance Committee (TMGC) approved the 2009 Guidance Document for Eastern GB cod and Eastern GB haddock, which included recommended U.S. TACs for these stocks. Although the TMGC also approved the Guidance Document for GB yellowtail flounder, it was not able to agree on a shared TAC for GB yellowtail flounder.

The recommended FY 2010 TACs were based on the most recent stock assessments (TRAC Status Reports for 2009), and the fishing mortality strategy shared by NMFS, and Canada's Department of Fisheries and Oceans, under the Understanding.

On September 23, 2009, the Council approved, consistent with the 2009 Guidance Document, the following U.S. TACs recommended by the TMGC: 338 mt of Eastern GB cod and 11,988 mt of Eastern GB haddock. The Council recommended a U.S. TAC of 1,200 mt for GB yellowtail flounder, based upon the SSC recommendation of 1,500 mt, minus the anticipated Canadian catch, estimated at 300 mt. The 300 mt estimate is approximately the 3-yr average of Canadian catch (2008, 2007, 2006; 151 mt, 132 mt, 590 mt, respectively), based upon TMGC information. The FY 2010 TACs for the U.S./Canada Management Area represent substantial decreases for cod (36 percent) and yellowtail flounder (43 percent), and an increase for haddock, compared to the FY 2009 TACs for those species. The final GB yellowtail flounder sub-ACL proposed for the groundfish fishery (999 mt; Table 3) is lower than the 1,200-mt U.S. TAC, as discussed above, due to the allocation to the scallop fishery and consideration of management uncertainty.

TABLE 9—2010 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder *
Total Shared TAC	1,350	29,600	1,500
U.S. TAC	338 (25%)	11,988 (40.5%)	1,200
Canada TAC	1,012 (75%)	17,612 (59.5%)	na

* Developed unilaterally by the Council.

If an analysis of the catch of the shared stocks by U.S. vessels indicates that an over-harvest occurred during FY 2009, the pertinent components of the FY 2010 ACL would be adjusted downward in order to be consistent with the FMP and Understanding (including the scallop ACL-subcomponent for GB yellowtail flounder). If an adjustment to one of the FY 2010 TACs of cod, haddock, or yellowtail flounder is necessary, it will be done consistent with the Administrative Procedure Act and the fishing industry will also be notified.

5. U.S./Canada Management Area Initial Measures for FY 2010

Under existing authority granted by the FMP (§ 648.85(a)(3)(iv)(D)) to the Regional Administrator, this final rule implements measures to optimize the harvest of the transboundary stocks managed under the Understanding. Pursuant to the authority cited above, the Council, in November 2009, voted to request that the Regional Administrator postpone the opening of the Eastern U.S./Canada Area for both sector and non-sector vessels fishing with trawl gear in FY 2010 from May 1, 2010, to August 1, 2010. This action implements that a delay, to prevent trawl fishing in the Eastern U.S./Canada Area during the time when cod bycatch is likely to be very high, and to prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder. To further constrain fishing mortality on GB cod, NMFS, in a manner similar to FYs 2008 and 2009, is limiting common pool vessels fishing with non-trawl gear in the Eastern U.S./Canada Area prior to August 1, 2010, to a cod catch of 5 percent of the Eastern GB cod TAC, or 16.9 mt of cod. This measure was successful in FYs 2008 and 2009 in slowing the annual catch rate of cod during the early part of the year.

Second, NMFS, under Regional Administrator authority, is implementing a possession limit of 2,500 lb (1,125 kg) per trip for GB yellowtail flounder for common pool vessels to prevent the common pool sub-ACL from being exceeded. NMFS is implementing this initial possession limit in order to moderate catch to ensure fishing limits are not exceeded, allow harvesting of the sub-ACL by the common pool, and decrease the likelihood that further restrictions during the FY would be needed to slow the catch. This possession limit is based on a recommendation of the Council's Groundfish Plan Development Team for a low GB yellowtail flounder trip limit, as well as a projected catch analysis for FY 2010, using current information on vessels that will fish in the common pool in FY 2010. If necessary, NMFS may modify this trip limit based upon new information regarding the vessel composition of the common pool, or revised analytical assumptions.

6. Special Management Program Status for FY 2010

The Regional Administrator has existing authority to allocate trips into the CA II Yellowtail Flounder SAP and, for other Special Management Programs (Regular B DAS Program; CA I Hook Gear Haddock SAP; and Eastern U.S./Canada Haddock SAP), has authority to close the program if the program would undermine achieving the objectives of the FMP or the SAP.

Therefore, this rule allocates zero trips to the CA II Yellowtail Flounder SAP for FY 2010, based on a determination that the available TAC of GB yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II SAP. The Regional Administrator has the authority to determine the allocation of the total number of trips into the CA II SAP based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. As implemented in 2005 by Framework Adjustment 40B (70 FR 31323, June 1, 2005), zero trips to this SAP should be allocated if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (*i.e.,* 150 trips of 15,000 lb/trip = 2,250,000 lb (1,021 mt) needed). This calculation takes into account the projected catch from the area outside of the SAP. Based on the groundfish sub-ACL of 2,125,256 lb (964 mt), even if the projected catch from outside the SAP area is zero, there is still insufficient GB yellowtail flounder available to allow the SAP to proceed (*i.e.,* 2,125,256 lb (964 mt) available < 2,250,000 (1,021 mt) needed).

This rule also disallows the use of Category B DAS in the Eastern U.S./Canada Haddock SAP for common pool vessels in FY 2010, based on the Regional Administrator's existing authority to close the SAP if the program would undermine the achievement of the objectives of the SAP or the FMP. All of the FY 2010 incidental catch TACs that would have been specified for the SAP are very small (GB cod: 2,646 lb (1.2 mt); GB yellowtail flounder: 44 lb (0.2 mt); pollock: 1,724 lb (0.8 mt); and GB winter flounder: 2,646 lb (1.2 mt)), and

difficult to monitor. Concurrent trips by several vessels into the SAP, or even a single trip, could result in the incidental TAC(s) being exceeded quickly. Based on historical information on the amount of GB cod caught (5,276 lb (2.4 mt)) on SAP trips that ended on a Category B DAS, the SAP would provide little opportunity to target haddock, with a high likelihood of the SAP closing upon reaching the incidental catch TAC for cod. Furthermore, past participation in this SAP was extremely low (*e.g.,* eight trips in FY 2008). For these reasons, the use of Category B DAS in the SAP is inconsistent with the objective of the SAP to allow access to haddock while avoiding or minimizing impacts on stocks of concern. Under Amendment 16, sector vessels are not restricted by the incidental catch TAC, and can fish in the SAP, provided they have adequate Annual Catch Entitlement (ACE) for Eastern GB haddock (and other stocks).

7. Haddock TAC for CA I Hook Gear Haddock SAP

FW 44 specifies a haddock TAC for the CA I Hook Gear Haddock SAP based on the GARM III stock assessment and a formula implemented in FW 42. The haddock TAC in a particular year is based on the TAC that was specified for the SAP in 2004 (1,130 mt), and scaled according to the size of the exploitable biomass of western GB haddock compared to the biomass size in 2004 (27,313 mt). The size of the western component of the GB haddock stock is estimated as 35 percent of the size of the total GB haddock stock. Therefore, if the 2010 exploitable biomass of haddock is projected to be 291,682 mt, the formula and resultant TAC is as follows: $(.35)(291{,}682)/27{,}313) \times 1{,}130 = 4{,}223.7$ mt. Table 10 contains the CA I Hook Gear Haddock SAP TACs and pertinent information for FY 2010–2012.

TABLE 10—CA I HOOK GEAR HADDOCK SAP TACS FY 2010–2012

Year	GB haddock exploitable biomass (mt)	Western GB haddock exploitable biomass	Biomass (yr)/ Biomass 2004	TAC (mt, live weight)
2004	78,037	27,313		
2010	291,682	102,089	3.738	4,223.7
2011	218,054	76,319	2.794	3,157.5
2012	177,978	62,292	2.281	2,577.2

8. Revised Stock Areas

Section 10 of the preamble of the proposed rule for this action proposed revisions to the stock areas for GB yellowtail flounder and GB winter flounder that were proposed in Amendment 16 for trip limits and sector ACEs, to reflect updated information regarding the stock areas used in GARM III and to monitor catch of ACLs in the NE multispecies fishery beginning in FY 2010. Similarly, there were additional changes necessary for the SNE/MA Stock Area 4, GB cod stock area (Regular B DAS Program), American plaice stock area (Regular B DAS Program), SNE/MA winter flounder stock area (Regular B DAS Program), and the SNE/MA yellowtail flounder stock area (Sector ACE allocations). Although the regulatory text of the FW 44 proposed rule included changes to these areas, these changes were not specifically reflected in the preamble. Additional information made available by the Center shortly before the publication of the proposed rule indicated that the stock areas for other stocks need to be adjusted to reflect the areas used in stock assessments and monitoring ACLs.

To ensure that the areas used to attribute catch to stock areas for the purposes of monitoring ACLs corresponds to the stock areas used in assessments, this final rule modifies several areas specified in the FW 40A final rule (November 19, 2004; 69 FR 67780) and the Amendment 16 proposed rule. Specifically, SNE/MA Stock Area 4, GB cod stock area (Regular B DAS Program), and American plaice stock area (Regular B DAS Program) have been revised to include Statistical Area 640, while the SNE/MA yellowtail flounder stock area (Sector ACE allocations) has been revised to include Statistical Areas 533, 534, and 541. In addition, Statistical Areas 464, 465, and 467 have been added to the stock areas for CC/GOM yellowtail flounder and witch flounder for the purposes of implementing the Regular B DAS Program and/or trip limits and sector measures. Statistical Areas 533, 534, 541, and 640 were added to the SNE/MA winter flounder stock area for the purpose of implementing the Regular B DAS Program, trip limits, and sector measures. For pollock, redfish, and GB haddock, the stock areas were extended south until it reached 35°00′ N. lat. to reflect the full range of the stock for the purposes of implementing the Regular B DAS Program and/or trip limits and sector measures.

Comments and Responses

Four comments were received that addressed this action.

Comment 1: A member of the fishing industry requested that NMFS reconsider the ACL specified for GOM winter flounder, stating that the method used to calculate the ACL is different from the other stocks, the landings data upon which the ACL is based is incorrect due to missing landings information, and that the landings data do not reflect stock status, which the commenter believes is healthy. Further, the commenter stated that the impacts of past DAS cuts on historical landings of GOM winter flounder were not considered in the evaluation of stock status, and that the low ACL specified for this stock will have a crippling impact on the inshore fleet.

Response: NMFS agrees that the method utilized to calculate the ACL for GOM winter flounder is different than that used for other stocks. The SSC, in its September 23, 2009, memorandum to the Council (memorandum), listed GOM winter flounder as one of the stocks for which an interim ABC (from which the ACL is derived) would be determined according to case-by-case recommendations, instead of determined through a more generic control rule. Stocks such as GOM winter flounder, that have an unknown status with respect to overfishing and overfished, are addressed on a case-by-case basis for interim ABC recommendations from the SSC. The unknown status in the case of GOM winter flounder resulted from there being no accepted stock assessment method.

Specifically, the GOM winter flounder ABC was determined using method 4 specified in the memorandum: "Interim ABC based upon data-poor proxies." The memorandum states: "Gulf of Maine winter flounder has unknown stock status, and the ABC recommendation is

based on 75 percent of recent catches." The PDT's calculation of ABC (and SSC recommendation) was based upon landings from 2006, 2007, and 2008 (247, 303, 402 mt, respectively), not 2005, 2006, and 2007, as the commenter stated.

NMFS understands that the landings data that the Potential Sector Contributions (PSCs) are based upon contains some errors; however, based upon the requests for corrections to landings data submitted by vessel owners to date, most errors are due to mis-attributing landings to the wrong (or unknown) vessel, which does not affect the calculation of the ABC, and not because of errors due to missing landings, which would affect the total landings value used to calculate the ABC. Based upon pertinent corrections at the time of preparing this final rule, NMFS is correcting the estimation of GOM winter flounder catch in FY 2006 (an additional 5,580 lb; 2.53 mt), and is therefore revising the ABC, total ACL, and groundfish sub-ACL for GOM winter flounder upwards by 1 mt.

NMFS agrees with the commenter that the level of historical landings reflects the regulations in place, as well as the stock status. Nevertheless, the SSC utilized landings data as the basis of its ABC recommendation. Because the stock assessment was not accepted, the landings data represent the best scientific information available.

Further, NMFS disagrees that the stock status can be characterized as "healthy." In the August 2008 report of GARM III (Northeast Fisheries Science Center Reference Document 08–15), the conclusions end with the following: "While the Panel was unable to determine the stock's status relative to the BRP's, it agreed that the current trend in the population was very troubling. The Panel generally agreed that it is highly likely that biomass is below Bmsy, and that there is substantial probability that it is below ½ Bmsy. The Panel noted that other stocks in the area of this mixed fishery were also at low levels."

NMFS agrees that the specification of the GOM winter flounder ACL will impact the inshore fleet in the GOM. As indicated in the EA for this action, and the FRFA in the preamble to this final rule, it is likely that groundfish revenue will decline due to the combined impact of Amendment 16 and the specification of catch limits. The amount of total revenue reduction to the fishery is estimated between 4 and 32 percent, depending upon the proportion of available fish that are caught.

Comment 2: The Massachusetts Division of Marine Fisheries (Massachusetts) commented on the combined impacts of Amendment 16 and FW 44, as well as specific aspects of the FW 44 catch specifications. They believe that NMFS's implementation of the Magnuson-Stevens Act and the National Standard 1 guidelines is overly precautionary, and that NMFS's utilization of the National Standard Guidelines as though they were strict requirements rather than guidance is resulting in excessively low ACLs that, in conjunction with sectors, will result in dramatic consolidation of the industry (particularly day vessels) and under-harvesting of available fishery yield. They believe that future consolidation of the industry will be the result of low ACLs, yet are concerned that such consolidation will be incorrectly blamed on sectors. Further, Massachusetts anticipates that low ACLs for some stocks will constrain the fishery's ability to catch other stocks with larger ACLs, and result in the closure of numerous sectors in many stock areas for prolonged periods of time. Massachusetts reiterated its concerns regarding the analytical limitations of Amendment 16 and the lack of a cap on sector Annual Catch Entitlements (ACEs). Lastly, they reiterated their concern regarding the loss of yield and unrealized revenue that will result from the implementation of Amendment 16 and FW 44.

With respect to the specifics of FW 44, Massachusetts noted the small GOM cod ACL for sectors (4,230 mt) compared with the catch associated with overfishing (11,089 mt) as an example of how scientific and management uncertainty have been taken into account in a precautionary manner. They expressed concern about the ability of NMFS to monitor the small incidental catch TACs specified for special management programs, and suggested that NMFS revisit catch limits as necessary when additional data suggest the need. Massachusetts noted GB yellowtail flounder as a stock for which there is recent research pertaining to stock status that should be reflected in the relevant science.

Response: Many of these comments were fully discussed by the Council and taken into account in the Council's recommendation concerning Amendment 16 and this framework. NMFS disagrees that the catch levels in FW 44 are the result of an overly precautionary interpretation of Magnuson-Stevens Act and the National Standard 1 guidelines. The Council and its Committees, including the SSC, developed the procedures under which the ACLs were developed in Amendment 16, with NMFS serving an advisory role. The National Standard 1 guidelines provide guidance on how FMPs can incorporate the new mandatory ACL and AM elements, pursuant to the Magnuson-Stevens Act requirements to end and prevent overfishing and rebuild overfished stocks. In its review of Amendment 16 and FW 44, NMFS relied upon the Magnuson-Stevens Act and the National Standard 1 guidelines to determine whether these actions are consistent with the Magnuson-Stevens Act. For GOM cod, as well as for all other groundfish stocks, the Magnuson-Stevens Act requirements to specify ACLs and AMs are two of the principal factors that determined the FW 44 specified catch levels. The factors that determine the catch levels and amount of potential yield from the fishery are: (1) The status of the stocks in the fishery and the fishing mortality rates; (2) the multispecies nature of the fishery; and (3) the selectivity of the fishery. NMFS believes that Amendment 16 and FW 44 make substantive progress toward preventing overfishing and rebuilding stocks. With respect to Massachusetts' comments regarding changes to the FMP and specifications, the Council may modify elements of the FMP, if necessary, to more effectively prevent overfishing, address consolidation, optimize yield, account for scientific or management uncertainty, *etc.,* based upon new scientific information and/or additional information to be gained in the future on the operation of the fishery under the amended FMP.

NMFS agrees that low ACLs for some stocks will constrain the fishery's ability to catch other stocks with larger ACLs, and may result in the closure of some sectors in specific stock areas for prolonged periods of time. As more fully explained in responses to comments on Amendment 16 and its implementing regulations, these kinds of constraints in harvesting one stock because of more restrictive measures on other stocks in a mixed-stock fishery are inevitable and unavoidable due to Magnuson-Stevens Act mandates and national standards. The impact of these low ACLs could be mitigated through improvements in the selectivity of the fishery as well as through flexibility provided by sector management. If vessels are able to selectively fish for stocks with relatively large ACLs, and avoid those stocks with low ACLs, sector closures would be minimized or delayed, and yield would be improved. Sector management allows vessels to pool their catch to avoid, to some extent the constraints of fishing under different ACLs in a mixed-stock fishery. With

respect to the analytical or other limitations of Amendment 16, this final rule addresses only specific elements of Amendment 16 selected by the Council for modification. A full discussion of issues related to Amendment 16 are in the preambles of the proposed and final rules for Amendment 16.

NMFS agrees with the commenter that the small incidental catch TACs will be difficult to monitor and, due to this concern, this final rule, under Regional Administrator authority, prohibits the use of Category B DAS in the Eastern U.S./Canada Haddock SAP. NMFS intends to closely monitor the remainder of the incidental catch TACs using current methods, which include estimation of total discards based upon increased observer coverage.

Comment 3: The Northeast Seafood Coalition (NSC) did not support the FW 44 provision to authorize the Regional Administrator to make inseason adjustments to certain management measures, because they believe such unpredictable adjustments will decrease a vessel's ability to plan its annual operations, and could create an incentive for derby fishing behavior, stating that this would be inefficient and dangerous. The NSC supported the trip limit reductions, which it believes will dampen the derby effect caused by actions that may be taken under the Regional Administrator's authority. It also supported the revised allocation of yellowtail flounder to the scallop fishery, as well as the requirement for limited access scallop vessels to land yellowtail flounder. Lastly, NSC stated that, in light of the large percentage of the GOM winter flounder ABC deducted for anticipated catch from State waters (35 percent), NMFS must ensure that the underlying data and methodology for this deduction are subject to serious scrutiny under the biennial review process of the FMP, and that the amount deducted should be readily modified, if necessary.

Response: The strategy supported by the commenter as an alternative to inseason adjustments (*i.e.,* to instead rely on Amendment 16 AMs that, if an ACL is exceeded, would be implemented at the start of the following FY), is not consistent with the Council's stated need for FW 44: "* * * to modify management measures in order to ensure that overfishing does not occur." NMFS has determined that this objective and the proposed measures to achieve the objective are consistent with the Magnuson-Stevens Act. The benefit to be gained through the Regional Administrator authority to implement inseason changes to DAS accounting rates and trip limits is the decreased likelihood that catch levels will exceed ACLs. NMFS acknowledges that there may be potential concerns and costs associated with this management measure, such as uncertainty or derby fishing behavior, but has determined that the need to avoid exceeding ACLs, and thus triggering AMs, overrides speculative impacts due to the uncertainty of inseason adjustments. Further, as acknowledged by NSC, the trip limits implemented by FW 44 for GOM cod and pollock will dampen derby fishing behavior caused by inseason adjustments.

NMFS agrees that the FW 44 trip limit reductions, requirement for limited access scallop vessels to land yellowtail flounder, and modified yellowtail flounder allocation to the scallop fishery are justified to ensure that the common pool achieves its fishing mortality objectives, discarding is minimized in the fishery, and the scallop fishery is allocated the appropriate amount of yellowtail flounder, respectively. NMFS also agrees that, in light of the large percentage of the GOM winter flounder ABC deducted for anticipated catch from State waters (35 percent), the underlying data and methodology for this deduction should be reviewed under the biennial review process of the FMP, and the amount deducted be modified, if necessary. Amendment 16 implements a process for the specification of catch levels that is flexible in order to reflect new information and changes in the fishery, as well as to optimize catch. The biennial process implemented by Amendment 16 was designed to be responsive to pertinent information.

Comment 4: The Council commented that the FW 44 proposed rule included two errors in the values proposed for sub-ACLs (white hake and SNE yellowtail flounder) that did not reflect the values in the FW 44 document. The Council also expressed support for management measures proposed for the U.S./Canada Management Area and Special Management Programs under Regional Administrator authority. Although not included in the proposed rule, the Council supported the reallocation of incidental catch TACs implemented by this final rule. Lastly, Council staff indicated that it is critical that the areas used to monitor ACLs correspond to the areas used for assessments, and stated that the proposed changes to the GB yellowtail flounder stock area to include Statistical Areas 542 and 543 are not consistent with any documentation of stock area in the GARM III report, TRAC report, or the stock status pages on the Northeast Fisheries Science Center (Center) Web site. Council staff also questioned whether there are other instances where management areas do not correspond with assessments, including for Statistical Areas 464 and 465.

Response: The sub-ACL values for white hake and SNE yellowtail flounder in the proposed rule were typographical errors, and NMFS has corrected these values based upon the FW 44 EA and EA Addendum. NMFS also acknowledges that the stock areas depicted in the GARM III report do not accurately reflect the stock areas that were used in individual assessments. Based on NMFS's consultation with stock assessment biologists at the Northeast Fisheries Science Center to identify statistical areas used for each stock assessment as part of GARM III, changes to stock areas are included in this final rule to reflect the stock areas actually used in GARM III. However, because the assessments for some stocks included all statistical areas within a broad stock area, the broad stock areas relied upon by Amendment 16 to monitor catch of all stocks include all statistical areas within the U.S. Exclusive Economic Zone. Finally, NMFS agrees that the management actions implemented by this final rule are allowable under Regional Administrator authority and are justified (as explained in sections 4 and 5 of this preamble).

Changes From the Proposed Rule

In § 648.14, paragraphs (k)(13)(ii)(A) and (B) are revised to update cross-references as a result of other revisions made in this final rule.

In § 648.85, paragraphs (b)(6)(v)(A), (B), (D), (F), (G), (H), (I), and (K) are revised to update the stock areas used in the Regular B DAS Program, for trip limits, and in sector measures for GOM cod, GB cod, American plaice, SNE/MA winter flounder, witch flounder, GB yellowtail flounder, GB winter flounder, and pollock, to reflect updated definitions of the stock areas used in assessments.

In § 648.86(m)(1), the example provided is revised to reference GB cod, instead of GOM cod, to ensure that the example includes the correct possession limit modified under FW 44 and implemented by this final rule.

In § 648.87, paragraphs (b)(1)(ii)(A), (C), (D), (E), and (F) are revised to update the stock areas used for trip limits and sector measures for CC/GOM yellowtail flounder, GOM haddock, GB haddock, redfish, and GOM winter flounder, to reflect updated definitions of the stock areas used in assessments.

In § 648.86, paragraphs (r) and (s) are renamed paragraphs (n) and (o), respectively, to update cross-references.

Regulations Implemented Under Authority of Amendment 16 and FW 44

The following paragraphs are implemented under joint authority of Amendment 16 and FW 44, where the Amendment 16 proposed rule regulatory text for some measures is modified by FW 44: §§ 648.14(k)(13)(ii)(A), and (B); 648.60(a)(5)(ii) introductory text and (a)(5)(ii)(c)(2); 648.82 (b)(6), (e)(1)(i), (o); 648.85 (b)(6)(v)(A), (G), (H), (I), and (K); and 648.86(a)(1) and (b)(1).

Classification

NMFS has determined that this action is consistent with the FMP, the Magnuson-Stevens Act and other applicable law.

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

Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in effectiveness of this rule, and to establish an effective date less than 30 days after the date of its publication. Publication of this rule is conditional upon approval and publication of the final rule for Amendment 16. A delay in the publication of the Amendment 16 final rule, therefore, necessitates a delay in the publication of this rule. FW 44 must be effective on May 1, 2010, pursuant to the FMP and Magnuson-Stevens Act requirements for implementation of ACLs. A May 1, 2010, effective date is necessary in order to specify catch levels and implement management measures necessary to eliminate overfishing and continue stock rebuilding, as well as prevent industry confusion. If this rule were to become effective later than May 1, 2010, Sector operations would be delayed because there would be no fishery-wide specification of catch limits (total ACLs) in effect, important mortality controls such as trip limits would not be in effect, and new Regional Administrator's authority to help ensure that ACLs are not be exceeded would not be in effect. The net result is likely to be less restrictive fishing regulations, widespread uncertainty and confusion in the groundfish fishery regarding what the fishing regulations are, and possibly in increase in derby-style fishing behavior. Such conditions would cause economic disruption to the industry and undermine industry efforts to rebuild depressed stocks. Historical progress in reducing fishing mortality and stock rebuilding has been made through reductions in fishing effort at a cost to the fishing industry, and such gains should not be lost or reduced. The time available for FW 44 rulemaking was constrained by multiple factors and therefore rulemaking could not be completed further in advance of May 1, 2010. These factors include the development of two other closely related management actions (Amendment 16 and sectors), data availability, and the scheduling of U.S. and international management bodies. Incorporation of the most recent scientific information results in timelines for the development of regulations that leave little room to expand such timelines, and pertinent information comes from disparate sources. Furthermore, the process of the development of catch levels involves multiple committees of the Council, as well as the involvement of members of the fishing industry. For example, information on the membership of sectors is necessary to specify the Sector and Common Pool sub-ACLs, and NMFS provided the maximum amount of time practicable for vessel owners to decide whether or not they wish to join sectors.

An FRFA was prepared. The FRFA incorporates the Initial Regulatory Flexibility Analysis, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A detailed description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this final rule, and in the Executive Summary and Section 3.2 of the EA prepared for this action.

This final rule modifies the GOM cod and pollock trip limits in Amendment 16 by: (1) Reducing the GOM cod trip limit in Amendment 16 (2,000 lb (907.2 kg)/DAS up to 12,000 lb (5,443.2 kg/trip) to the status quo level (800 lb (362.9 kg)/DAS up to 4,000 lb (1,814.4 kg)/trip); (2) reducing the GOM cod trip limit for vessels fishing under a Handgear A or Handgear B permit to 300 lb (136.1 kg)/trip and 75 (34.0 kg)lb/trip, respectively; and (3) imposing a trip limit for pollock to of 1,000 lb (453.6 kg)/DAS up to 10,000 lb (4,536 kg)/trip (Amendment 16 does not include a possession limit for pollock). This final rule also: (1) Grants the Regional Administrator the authority to implement inseason trip limits and/or differential DAS counting for any groundfish stock in order to prevent catch from exceeding the ACL; (2) specifies OFLs, ABCs, and ACLs for all 20 groundfish stocks in the FMP for FY 2010 through 2012, as well as the TACs for transboundary GB stocks, and allocations of yellowtail flounder to the scallop fleet; (3) allocates zero trips to the CA II Yellowtail Flounder SAP; (4) limits the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels; (5) delays the opening of the Eastern U.S./Canada Area for trawl vessels; and (6) implements a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). These measures will affect regulated entities engaged in commercial fishing for groundfish and scallops. Sub-ACLs are also set for the recreational catches of GOM cod and GOM haddock and will affect regulated entities engaged in the party/charter industry.

Description of and Estimate of the Number of Small Entities to Which the Final Rule Applies

Under the Small Business Administration, any commercial fishing vessel that generates $4 million in sales, or any party/charter operation with $7 million in annual sales, is considered a small business. Although multiple vessels may be owned by a single owner, tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of analysis, each permitted vessel is treated as a single small entity. During FY 2008 (the most recent FY for which complete data are available), 2,732 vessels were issued a scallop and/or a NE multispecies permit. Of these vessels, 1,867 were issued only a NE multispecies permit, 500 were only issued a scallop permit, and 365 were issued both a scallop and a NE multispecies permit. The latter include vessels that have a limited access scallop and a limited access Category E (combination vessel) groundfish permit, as well as vessels that hold some combination of a party/charter permit and a limited access scallop permit or a general category permit. Among NE multispecies permit holders, 1,472 held limited access permits, and 760 held open access party/charter permits.

Based on FY 2008 activity, 1,267 of the 2,732 vessels with either a commercial scallop or NE multispecies permit participated in the scallop or NE multispecies fishery. Median gross sales for these vessels were $186,000, and no one entity had sales exceeding $4 million. Based on FY 2008 logbook data, 143 of the 760 permitted party/charter vessels participated in the GOM recreational groundfish fishery where either GOM haddock or GOM cod were retained. The total number of passengers carried by a single of these regulated

party/charter operators did not exceed 11,000. At an average passenger fee of approximately $65 per passenger, none of the participating party/charter businesses would exceed $7 million in sales. Therefore, NMFS has determined that all 1,410 of the participating commercial and recreational for-hire vessels are small entities under the Regulatory Flexiblity Act, and hence there is no disproportionate impact between small and large entities.

Summary of the Issues Raised by Public Comments in Response to the IRFA and a Summary of the Agency Assessment of Such Issues and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

One commenter expressed concern about the economic impacts of the measures and catch specifications. The commenter stated that excessively low ACLs, in conjunction with sectors, will result in dramatic consolidation of the industry (particularly day vessels) and under-harvesting of available fishery yield. No modifications to the proposed rule were made as a result of this comment. Amendment 16 to the FMP, implemented in conjunction with this final rule, contains measures to mitigate some of the negative economic impacts of the FMP.

Economic Impacts of the Final Action

A more detailed treatment of economic impacts may be found in Section 7.4 of the EA and in Section 3.4 of the Addendum to the EA. As noted in Section 7.4, the economic impacts of the ACLs set for the commercial groundfish fishery are uncertain for any given vessel, because the economic impacts depend on whether the vessel owner chooses to enroll in a sector or remains in the common pool. Sectors offer relief from certain regulations while being limited to a quota on catch. Sectors provide opportunities to improve economic efficiency while placing a premium on managing available quota for multiple species to maximize the value of landings. Fishing in the context of a sector will likely require changes in fishing practices, including where, when, and how fishing operations are conducted.

Groundfish revenues during both FY 2007 and 2008 were approximately $85 million. Given the specified 2010 ACLs, at 2008 prices, the available potential revenue would be approximately $190 million, assuming the available ACL for all stocks can be harvested and no discarding occurs. Realizing revenues of this magnitude is unlikely, however, because some level of discarding will occur, and available ACL for some species will constrain the ability to harvest the full ACL of others. If there are no changes in recent discarding rates or gear selectivity, groundfish revenues may be expected to decline to $63 million in FY 2010. However, improvements in selectivity, particularly while fishing for GB haddock, which comprises nearly half of the aggregate groundfish ACL, could lead to substantially higher revenues. If, for example, selectivity could be improved by 50 percent over FY 2007–2008 averages, groundfish revenues would be an estimated $87 million in FY 2010.

Even if fishing revenues do not improve, vessel owners that enroll in sectors may still find themselves in a more favorable financial position because sectors offer the opportunity for pooling of quota across fishing platforms. For individuals that own multiple vessels, operating in a sector allows them to shed redundant capital, thereby reducing fixed costs. Operating costs may also be reduced because sector participants are granted certain regulatory exemptions that decrease overall costs, and because fishing will likely be moved to an owner's most efficient vessel.

Economic impacts on vessels that do not enroll in a sector are also uncertain. The common pool measures (trip limits for GOM cod and pollock) were designed to ensure that the catch does not exceed the sub-ACL allocated to the common pool as a whole. The economic impact of these measures was estimated by applying the common pool measures adopted under Amendment 16, as modified by this action, to FY 2007 activity. As of September 1, 2009, and at the time of the proposed rule for FW 44, 723 permits had enrolled in a sector, and 757 had not. The analysis in FW 44 reflects a lower number than are currently enrolled. As of January 22, 2010, additional vessels had enrolled in sectors, bringing the total number of sector vessels to 812.

Of those vessels in the common pool, a large number have not been active in the groundfish fishery. In fact, only 279 of the common pool vessels had any Category A DAS that would enable them to participate in the groundfish fishery. Of these 279, only 113 were found to have actually participated in the groundfish fishery. These vessels had aggregate gross sales of $24.8 million (an average of $219,500 per vessel), of which nearly 30 percent was derived from sales on trips where groundfish were landed. The estimated combined effect of the Amendment 16/FW 44 measures on the common pool is expected to reduce total sales by $5.1 million, an average of $45,100 per vessel, or 20.1 percent. This represents a $3-million reduction in groundfish revenue from 2008 levels. These economic impacts represent an upper bound of the adverse impacts, because they do not reflect the ability of vessels to modify fishing behavior or to lease DAS to mitigate potential impacts. However, the ability to offset such impact by DAS leasing may be limited. Converting 2007 activity into 24-hr increments, as implemented by Amendment 16, the total DAS needed to fish at 2007 levels (3,769 DAS) exceeds that of the total DAS that will be allocated to the common pool (3,600) in FY 2010. Furthermore, the ability to find trading partners may also be limited by the restrictions on trading among vessels within specified baseline length and horsepower characteristics.

The allocation of yellowtail flounder to the scallop fishery in FY 2010 would have no negative economic impact on the scallop fishery, because the allocation would not constrain scallop catch. The economic impact of this action on the NE multispecies fishery in FY 2010 would be a reduction in multispecies revenue of between 1 and 15 percent. The value of each metric ton of yellowtail flounder to the NE multispecies fishery ranges from $3,296 to $41,176, depending on whether the estimate includes only the value of yellowtail flounder, or also includes potential revenue losses from other groundfish stocks that may result from loss of access to a yellowtail stock area. GB yellowtail flounder is more valuable than SNE/MA yellowtail flounder because of the greater groundfish fishing opportunities on GB. The estimated losses to the GB fishery range from $481,216 to $6 million for FY 2010, with an expected loss of $1.8 million.

In contrast, as of FY 2011, it is anticipated that there will be short-term AMs that will impact the scallop fishery if the sub-ACL is exceeded. The economic impact of the yellowtail flounder sub-ACL for the scallop fishery for FY 2011 is uncertain. This sub-ACL for the scallop fishery would have a potential impact on both groundfish and scallop vessels. However, as was the case for the setting of NE multispecies ACLs, the impact on any given vessel is indeterminate. The AM for the scallop fleet has yet to be determined, and setting an ACL may cause changes in fishing strategies to avoid foregone revenues that may be associated with exceeding the ACL. Assuming an inseason AM is selected, and there is no change in fishing patterns by either groundfish or scallop vessels, an upper-bound estimate is a total revenue loss of

$35 million and $2.6 million for scallop and groundfish, respectively, during 2011, and losses of $36 million and $4 million during 2012. These values represent about 6 percent of the likely scallop ACLs that will be set for 2011 and 2012, and about 5 percent or less of groundfish revenue, depending on factors noted above affecting realized groundfish revenue.

This final rule increases the amount of yellowtail flounder allocation to the scallop fishery and decreases the amount of yellowtail flounder for the groundfish fishery compared to the proposed rule. Although the range of estimated impacts of the final allocations are similar to the proposed rule, the economic impacts to the groundfish fleet are increased due to the smaller allocations of GB and SNE/MA yellowtail flounder (35 mt and 12 mt, respectively) to the groundfish fishery.

For FY 2010, the estimated revenue loss for the groundfish fishery resulting from the combined impacts of the common pool measures and ACL is between $3 million and $27 million (from the baseline FY 2008 revenue of $85 million), depending on the proportion of available fish that is caught. The larger revenue reductions would result from a continuation of recent TAC utilization and discard rates (which are only a small fraction of available haddock caught), whereas the lower revenue reduction estimate would require a 50-percent reduction in the amount of under-harvesting.

For FY 2011, the revenue loss resulting from the combined impacts of the common pool measures, ACL, and yellowtail flounder allocation to the scallop fishery is estimated at between $26.9 million and $53.8 million. The FY 2011 revenue loss for the scallop fleet is estimated at $35 million. The FY 2011 impact on groundfish revenue ranges from a loss of $15.8 million to a gain of $11.1 million. For FY 2012, the estimated revenue loss resulting from the combined impacts of the common pool measures, ACL, and yellowtail flounder allocation to the scallop fishery is between $27.6 million and $54.8 million. The FY 2012 loss to the scallop fleet is estimated at $36 million. The FY 2012 impact on groundfish revenue ranges from a loss of $14.8 million to a gain of $12.4 million.

This final rule does not modify the recreational measures implemented by Amendment 16. Those measures add 2 weeks to the GOM cod closed season and reduce the size limit on GOM haddock from 19 to 18 inches (47.5 to 45 cm). Thus, passenger demand may be expected to respond to these regulatory changes, and may not be expected to be affected by the setting of any particular recreational sub-ACL. However, because exceeding a recreational sub-ACL would trigger an AM, the economic impacts on recreational party/charter vessels would be associated with the likelihood that harvest levels would trigger an AM. According to GARM III estimates of landings, GOM cod harvest by all recreation modes ranged between 1,960 mt and 953 mt from FY 2004 to 2007. The GOM cod recreational sub-ACL would be 2,673 mt, 2,824 mt, and 2,826 mt during FY 2010, 2011, and 2012, respectively. Because harvest levels of GOM cod by the recreational sector, including party/charter operators, has been below the recreational sub-ACL for GOM cod, an AM would not be expected to be triggered by these limits. For this reason, the GOM cod sub-ACL would not be expected to have an adverse economic impact on party/charter vessels.

By contrast, during FY 2004–2007, the recreational harvest of GOM haddock ranged between 430 mt and 717 mt and, under this final rule, the recreational sub-ACL for GOM haddock declines from 324 mt in FY 2010, to 259 mt in 2012. This means that the recreational GOM haddock ACL will be about 57 percent of the FY 2004–2007 average harvest. In the absence of avoidance behavior by party/charter vessels, the GOM haddock sub-ACL may be expected to be exceeded, triggering an AM. The impact of triggering a GOM haddock AM on party/charter vessels is uncertain. Available data suggest substitutability between cod and haddock on party/charter trips, so if the GOM cod recreational sub-ACL is not constraining, some switching between haddock and cod on GOM party/charter trips may be anticipated. The economic impact on party/charter operators will depend on the selected AM and the relative strength of angler preference between cod and haddock. If the AM is a seasonal closure, then the economic impact would be a loss in trips that could be taken during the closure. These trips may not be recovered, given the seasonal nature of recreational passenger demand. If the GOM haddock AM is a change in the bag or size limit, and cod may easily be substituted for haddock, then passenger demand may be expected to be largely unchanged and the economic impact on party/charter vessels would likely be relatively low.

The economic impacts to the groundfish fishery of specification of the U.S./Canada TACs are difficult to predict due to the many factors that may affect the level of catch; however, it is likely that the substantially reduced FY 2010 TACs for Eastern GB cod and GB yellowtail flounder (compared to FY 2009), will result in reduced overall revenue from the U.S./Canada Management Area. The amount of fish landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (for the common pool), and may be further reduced by limitations on access to stocks that may result from the associated fishing rules. Reductions to the value of the fish may result from fishing derby behavior and potential impact on markets. The revenue from the sale of the three transboundary stocks may be up to 22 percent less than such revenue in FY 2008. It is possible that total revenue may be reduced by up to 30 percent from FY 2009 revenues. The amount of haddock that has been harvested from the U.S./Canada Management Area has been increasing, but it is unknown whether this trend will continue. The delayed opening of the Eastern U.S./Canada Area for trawl vessels will likely result in increased revenue from the Eastern U.S./Canada Area, because it is likely to prolong the time period during which the area is open and enable a higher overall catch of all species. Similarly, the specification of a trip limit for GB yellowtail flounder will prolong the opening of the Eastern U.S./Canada Area and result in greater overall revenue.

The allocation of zero trips for the CA II Yellowtail Flounder SAP will preclude additional revenue from CA II, but will not represent a decrease in opportunity or revenue from recent years, because the SAP has not been opened since FY 2004 due to the status of the GB yellowtail flounder stock. The prohibition on the use of Category B DAS in the Eastern U.S./Canada Haddock SAP will result in only a slight decrease in revenue, because participation in the SAP has been extremely low.

This final rule also provides the Regional Administrator authority to implement trip limits or differential DAS counting inseason in order to prevent ACLs from being exceeded, or to facilitate the harvesting of ACLs. Because it is unclear if this authority will result in decreased or increased fishing effort, the effect of this action may be short-term increases or decreases in revenue. The Regional Administrator authority will contribute to long-term increases in revenue by optimizing catch levels to align with catch targets and facilitate stock rebuilding.

Description of the Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The measures and catch specifications of this final rule will be implemented at the same time as the final rules for Amendment 16 and approved sector operations plans (related actions). This final rule implements measures and specifications that, in conjunction with the related actions, minimize the long-term economic impacts on small entities. Long-term impacts of this final rule, as well as the related actions of the FMP, are minimized by ensuring that management measures and catch levels result in fishing mortality rates that are sustainable and contribute to rebuilding stocks, therefore maximizing yield, as well as providing additional flexibility for fishing operations in the short term.

The specification of catch levels for components of the groundfish and non-groundfish fisheries, as well as additional management measures to ensure that such catch levels are not exceeded, increase the likelihood that the biological objectives of the FMP will be met, resulting in greater sustainable revenue over the long term. Although for some stocks the catch levels specified will result in decreased short-term landings and revenues as compared to recent catches, for other stocks the catch levels specified represent large increases from recent catches. Whether or not a particular small entity is able to land high availability stocks such as GB haddock will depend upon its ability to operate in an efficient and flexible manner, and reduce catch of stocks that will be constraining (due to reduced catch levels required). If the owner/operator of a fishing vessel is able to fish in an efficient manner that optimizes species selectivity, and respond to market conditions, it is possible that they may increase revenue for some stocks. The recreational allocation ensures that the recreational fishery will not be subject to further efforts to reduce catch if there is excessive catch by other components of the fishery.

Amendment 16 implements new sectors and sector rules designed to increase operational efficiency and reduce waste, and may lead to increased revenue for participating vessels. Amendment 16 implements modification to special management programs that will allow additional flexibility to lease or transfer DAS, and maximize opportunities in SAPs. The changes in the DAS lease and transfer programs increase the likelihood that vessels in the common pool will be able to acquire sufficient DAS to remain economically viable, despite additional effort controls. It is difficult to predict the amount of mitigation that will occur from the combined impacts of the FW 44 measures and specifications, Amendment 16 measures, and the approved sector operations, in the context of the substantial effort reductions that will occur.

In contrast, the No Action alternative would have achieved neither the catch levels consistent with Amendment 16 fishing mortality reductions, nor the Magnuson-Setvens Act mandates for ACLs. Because the No Action alternative would not specified catch levels to end overfishing or rebuilt stocks, it would not have been consistent with applicable laws and cannot be implemented through this action. Based upon the rebuilding projections in Amendment 16, although the short-term economic benefits associated with the No Action alternative are greater than the action implemented, over the long-term, economic benefits of catch levels specified in this final rule that enable stock rebuilding will result in greater economic benefits.

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, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, *i.e.,* permit holder letter, will be sent to all holders of permits for the NE multispecies fishery, along with each individual issued a Federal dealer permit. The guide and this final rule will be available upon request.

This rule contains no new reporting or recordkeeping requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: March 26, 2010.

Eric C. Schwaab,

Assistant Administrator to Fisheries, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.10, revise the section heading and paragraph (k)(3)(iv) is added to read as follows:

§ 648.10 NE multispecies broad stock areas.

* * * * *

(k) * * *

(3) * * *

(iv) *SNE/MA Stock Area 4.* The SNE/MA Stock Area 4 is the area bounded on the north and west by the coastline of the United States, bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, and bounded on the east by straight lines connecting the following points in the order stated:

SNE/MA STOCK AREA 4

Point	N. latitude	W. longitude
G12	(1)	70°00′
IGB7	41°20′	70°00′
IGB6	41°20′	69°50′
IGB5	41°10′	69°50′
IGB4	41°10′	69°30′
IGB3	41°00′	69°30′
IGB2	41°00′	68°50′
SNE4	39°50′	68°50′
SNE3	39°50′	69°00′
SNE5	39°00′	69°00′
SNE6	39°00′	(2)

[1] South-facing shoreline of Cape Cod, MA.
[2] The U.S.-Canada maritime boundary as it intersects with the EEZ.

■ 3. In § 648.14, add paragraph (i)(2)(iii)(D) and revise paragraphs (k)(13)(ii)(A) and (B) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(2) * * *

(iii) * * *

(D) Discard yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1) and (2).

* * * * *

(k) * * *

(13) * * *

(ii) * * *

(A) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (e), (g), (h), (j), (k), (l), (n), and (o); or violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(B) Possess or land per trip more than the possession or landing limits

specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (m),(n), and (o), § 648.81(n), § 648.82(b)(5) and (6), § 648.85, or § 648.88 if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

■ 4. In § 648.60, revise paragraph (a)(5)(ii) introductory text and paragraph (a)(5)(ii)(C) to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(5) * * *

(ii) *NE multispecies possession limits and yellowtail flounder TACs.* A limited access scallop vessel that is declared into a trip and fishing within the Sea Scallop Access Areas described in § 648.59(b) through (d), and issued a valid NE multispecies permit as specified in § 648.4(a)(1), may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(1), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section. Such vessel is subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4).

* * * * *

(C) *Yellowtail flounder.* Such vessel must retain all yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1).

(*1*) *Scallop Access Area TAC Availability.* After declaring a trip into and fishing within the Closed Area I, Closed Area II, or Nantucket Lightship Scallop Access Areas described in § 648.59(b), (c), and (d), respectively, a scallop vessel that has a valid NE multispecies permit, as specified in § 648.4(a)(1), may possess and land yellowtail flounder, provided the Regional Administrator has not issued a notice that the scallop fishery portion of the TACs specified in § 648.85(c) for the respective Closed Area I, Closed Area II, or Nantucket Lightship Scallop Access Areas have been harvested. The Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the scallop fishery portions of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from fishing in, and declaring and initiating a trip to the Access Area(s), where the TAC applies, for the remainder of the fishing year, unless the yellowtail flounder TAC is increased, as specified in paragraph (a)(5)(ii)(C)(*3*) of this section.

(*2*) *U.S./Canada Area TAC availability.* After declaring a trip into and fishing in the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), a scallop vessel that has a valid NE multispecies permit, as specified in § 648.4(a)(1), may possess and land yellowtail flounder, provided that the Regional Administrator has not issued a notice that the U.S./Canada yellowtail flounder TAC specified in § 648.85(a)(2) has been harvested. If the yellowtail flounder TAC established for the U.S./Canada Management Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(*3*), scallop vessels are prohibited from possessing or landing yellowtail flounder in or from the Closed Area I and Closed Area II Access Areas.

(*3*) *Modification to yellowtail flounder TACs.* The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

* * * * *

■ 5. In § 648.82, revise the introductory text to paragraph (b)(6), and add paragraphs (e)(1)(i), (n)(1)(ii), (o) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(b) * * *

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout as specified under § 648.86. The cod trip limit shall be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example, if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

* * * * *

(e) * * *

(1) * * *

(i) *Common pool vessels.* For a common pool vessel, Category A DAS shall accrue in 24-hr increments, unless otherwise required under paragraphs (n) or (o) of this section. For example, a vessel that fished from 6 a.m. to 10 p.m. would be charged 24 hr of Category A DAS, not 16 hr; a vessel that fished for 25 hr would be charged 48 hr of Category A instead of 25 hr.

* * * * *

(n) * * *

(1) * * *

(ii) *Differential DAS counting factor.* For determining the differential DAS counting AM specified in this paragraph (n)(1), or the inseason differential DAS counting adjustment specified in paragraph (o) of this section, the following differential DAS factor shall, except as provided in paragraph (n)(1)(iii) of this section, be applied to the DAS accrual rate specified in paragraph (e)(1) of this section, and implemented in a manner consistent with the Administrative Procedure Act.

Proportion of ACL caught	Differential DAS factor
0.5	0.5
0.6	0.6
0.7	0.7
0.8	0.8
0.9	No change
1.0	No change
1.1	1.1
1.2	1.2
1.3	1.3
1.4	1.4
1.5	1.5
1.6	1.6
1.7	1.7
1.8	1.8
1.9	1.9
2.0	2.0

* * * * *

(o) *Inseason adjustment to differential DAS counting for NE multispecies common pool vessels.* (1) In addition to the DAS accrual provisions specified in paragraphs (e) and (n) of this section, and other measures specified in this part, common pool vessels are subject to the following restrictions: The Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels as described in § 648.90(a)(4). This projection shall include catch by common pool vessels, as well as available information, regarding the catch of regulated species and ocean pout by vessels fishing for NE multispecies in State waters outside of the authority of the FMP, vessels fishing in exempted fisheries, and vessels

fishing in the Atlantic sea scallop fishery. If it is projected that catch will exceed or under-harvest the common pool sub-ACL, the Regional Administrator may, at any time during the fishing year, implement a differential DAS counting factor to all Category A DAS used within the pertinent stock area(s), as specified in paragraph (n)(1)(i) of this section, in a manner consistent with the Administrative Procedure Act. Notwithstanding the fact that the differential DAS accountability measures described in paragraph (n)(1) of this section are intended to address potential over-harvests in fishing year 2010 and 2011, the scope of the Regional Administrator authority specified in this paragraph (o) is not limited to FY 2010 and 2011.

(2) The differential DAS counting factor shall be based on the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified in § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod by the end of fishing year 2010, the Regional Administrator may implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels within the Inshore GOM Differential DAS Area during fishing year 2010 (*i.e.*, Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch will simultaneously exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, the Regional Administrator may implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that the common pool vessel catch will exceed the GOM cod sub-ACL by a factor of 1.2 and the CC/GOM yellowtail flounder sub-ACL by a factor of 1.1, the Regional Administrator may implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels within the Inshore GOM Differential DAS Area during the fishing year. For any inseason differential DAS counting factor implemented, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS, because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged).

(3) For any inseason differential DAS counting factor implemented in fishing year 2011, the inseason differential DAS counting factor shall be applied in accordance with the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, and, if pursuant to paragraph (n)(1) of this section, in conjunction with a differential DAS counting factor also implemented for the same differential DAS area during fishing year 2011 as an AM. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011, as an AM due to a 20-percent overage of the GOM cod sub-ACL in fishing year 2010, and during fishing year 2011 the GOM cod sub-ACL was projected to be exceeded by 30 percent, an additional differential DAS factor of 1.3 would be applied to the DAS accrual rate as an inseason action during fishing year 2011. Under this example, the DAS accrual rate after both the AM and the inseason differential DAS rate is applied to FY 2011 in the Inshore GOM Differential DAS Counting Area would be 37.4 hr charged for every 24 hr fished—1.2 × 1.3 × 24-hr DAS charge.

■ 6. In § 648.85, add paragraphs (b)(6)(v)(A), (B), (D), (F), (G), (H), (I), and (K) to read as follows:

§ 648.85 Special management programs.

(b) * * *

(6) * * *

(v) * * *

(A) *GOM cod stock area.* The GOM cod stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

GOM COD STOCK AREA

Point	N. latitude	W. longitude
GOM1	(1)	70°00′
GOM2	42°20′	70°00′
GOM3	42°20′	67°40′
GOM4	(2)	67°40′
GOM5	(3)	67°40′
GOM6	43°50′	67°40′
GOM7	43°50′	(4)
GOM8	(4)	67°00′
GOM9	(5)	67°00′

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary (southern intersection with 67°40′ W. long.).
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ W. long.).
[4] U.S./Canada maritime boundary.
[5] Intersection of the south-facing ME coastline and 67°00′ W. long.

(B) *GB cod stock area.* The GB cod stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

GB COD STOCK AREA

Point	N. latitude	W. longitude
GB1	(1)	70°00′
GB2	42°20′	70°00′
GB3	42°20′	(2)
GB4	35°00′	(2)
GB5	35°00′	(3)

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] Intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

(D) *American plaice stock area.* The American plaice stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. latitude	W. longitude
AMP1	(1)	67°00′
AMP2	(2)	67°00′
AMP3	43°50′	(2)
AMP4	43°50′	67°40′
AMP5	(3)	67°40′
AMP6	(4)	67°40′
AMP7	42°30′	67°40′
AMP8	42°30′	(2)
AMP9	35°00′	(2)

AMERICAN PLAICE STOCK AREA—Continued

Point	N. latitude	W. longitude
AMP10	35°00′	(5)

[1] Intersection of south-facing ME coastline and 67°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).
[4] U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.)
[5] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

(F) *SNE/MA winter flounder stock area.* The SNE winter flounder stock area, for the purposes of the Regular B DAS Program and identifying stock areas for trip limits specified in §§ 648.86 and 648.89 is the area defined by straight lines connecting the following points in the order stated:

SNE/MA WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	68°50′
4	39°50′	68°50′
5	39°50′	69°00′
6	39°00′	69°00′
7	39°00′	(2)
8	35°00′	(2)
9	35°00′	(3)

[1] Intersection of the north-facing Coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] The intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

(G) *Witch flounder stock area.* The witch flounder stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the north and west by the coastline of the United States, bounded on the south and east by a line running east from the intersection of the east-facing coastline of Outer Banks, NC, at 35°00′ N. lat. to the boundary of the EEZ, and running northward to the U.S.-Canada border.

(H) *GB yellowtail flounder stock area.* The GB yellowtail flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded by straight lines connecting the following points in the order stated:

GB YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
USCA1	42°20′	68°50′
USCA16	42°20′	(1)
USCA5	39°00′	(1)
USCA17	39°00′	69°00′
USCA18	39°50′	69°00′
USCA2	39°50′	68°50′
USCA1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

(I) *GB winter flounder stock area.* The GB winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area bounded by straight lines connecting the following points in the order stated:

GB WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
USCA1	42°20′	68°50′
USCA16	42°20′	(1)
USCA5	39°00′	(1)
USCA17	39°00′	69°00′
USCA18	39°50′	69°00′
USCA2	39°50′	68°50′
USCA1	42°20′	68°50′

[1] U.S./Canada maritime boundary.

* * * * *

(K) *Pollock stock area.* The pollock stock area, for the purposes of the Regular B DAS Program and determining areas applicable to sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

POLLOCK STOCK AREA

Point	N. latitude	W. longitude
P1	(1)	67°00′
P2	(2)	67°00′
P3	43°50′	(2)
P4	43°50′	67°40′
P5	(3)	67°40′
P6	(4)	67°40′
P7	42°30′	67°40′
P8	42°30′	(2)
P9	35°00′	(2)
P10	35°00′	(5)

[1] Intersection of south-facing ME coastline and 67°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).
[4] U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.).
[5] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

■ 7. In § 648.86, revise paragraphs (a)(1), (b)(1), and add paragraphs (m)(1), (n), and (o) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(1) *NE multispecies common pool vessels.* Haddock possession restrictions for such vessels may be implemented through Regional Administrator authority, as specified in paragraph (r) of this section.

* * * * *

(b) * * *

(1) *GOM cod landing limit.* Except as provided in paragraph (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 800 lb (362.9 kg) of cod for each DAS, or part of a DAS, up to 4,000 lb (1,818.2 kg) per trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(m) * * *

(1) *Daily landing restriction.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may only land regulated species or ocean pout once in any 24-hr period. For example, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 2,000 lb (907.2 kg) of GB cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day.

(n) *Pollock.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may not possess or land more than 1,000 lb (450 kg) of pollock for each DAS or part of a DAS fished, up to 10,000 lb (4,500 kg) per trip.

(o) *Regional Administrator authority to implement possession limits*—(1) *Possession restrictions to prevent exceeding common pool sub-ACLs.* If the Regional Administrator projects that the catch of any NE multispecies stock allocated to common pool vessels pursuant to § 648.90(a)(4) will exceed the pertinent sub-ACL, NMFS may

implement or adjust, at any time prior to or during the fishing year, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-ACL in that fishing year.

(2) *Possession restrictions to facilitate harvest of sub-ACLs allocated to the common pool.* If the Regional Administrator projects that the sub-ACL of any stock allocated to the common pool pursuant to § 648.90(a)(4) will not be caught during the fishing year, the Regional Administrator may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to facilitate harvest and enable the total catch to approach, but not exceed, the pertinent sub-ACL allocated to the common pool for that fishing year.

■ 8. In § 648.87, add paragraphs (b)(1)(ii)(A), through (F) to read as follows:

§ 648.87 Sector allocation.

(b) * * *

(1) * * *

(ii) * * *

(A) *CC/GOM Yellowtail Flounder Stock Area.* The CC/GOM Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of CC/GOM yellowtail flounder ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
1	(1)	70°00′
2	(2)	70°00′
3	41°20′	(3)
4	41°20′	69°50′
5	41°10′	69°50′
6	41°10′	69°30′
7	41°00′	69°30′
8	41°00′	68°50′
9	42°20′	68°50′
10	42°20′	(4)

[1] Intersection of south-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] Intersection of north-facing coastline of Nantucket, MA, and 70°00′ W. long.
[3] Intersection of east-facing coastline of Nantucket, MA, and 41°20′ N. lat.
[4] U.S./Canada maritime boundary.

(B) *SNE/MA Yellowtail Flounder Stock Area.* The SNE/MA Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to sector allocations of SNE/MA yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
SNE1	35°00′	(1)
SNE2	35°00′	(2)
SNE3	39°00′	(2)
SNE4	39°00′	69°00′
SNE5	39°50′	69°00′
SNE7	39°50′	68°50′
SNE8	41°00′	68°50′
SNE9	41°00′	69°30′
SNE10	41°10′	69°30′
SNE11	41°10′	69°50′
SNE12	41°20′	69°50′
SNE13	41°20′	(3)
SNE14	(4)	70°00′
SNE15	(5)	70°00′

[1] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.
[2] U.S./Canada maritime boundary.
[3] Intersection of east-facing coastline of Nantucket, MA, and 41°20′ N. lat.
[4] Intersection of north-facing coastline of Nantucket, MA, and 70°00′ W. long.
[5] Intersection of south-facing coastline of Cape Cod, MA, and 70°00′ W. long.

(C) *GOM Haddock Stock Area.* The GOM Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and on the south by straight lines connecting the following points in the order stated:

GOM HADDOCK STOCK AREA

Point	N. latitude	W. longitude
GOM1	(1)	70°00′
GOM2	42°20′	70°00′
GOM3	42°20′	67°40′
GOM4	(2)	67°40′
GOM5	(3)	67°40′
GOM6	43°50′	67°40′
GOM7	43°50′	(4)
GOM8	(4)	67°00′
GOM9	(5)	67°00′

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary (southern intersection with 67°40′ W. long.).
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ W. long.).
[4] U.S./Canada maritime boundary.
[5] Intersection of the south-facing ME coastline and 67°00′ W. long.

(D) *GB Haddock Stock Area.* The GB Haddock Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GB haddock ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the west by the coastline of the United States, on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, on the east by the U.S./Canadian maritime boundary, and bounded on the north by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
1	(1)	70°00′
2	42°20′	70°00′
3	42°20′	(2)

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary.

(E) *Redfish Stock Area.* The Redfish Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of redfish ACE pursuant to paragraph (b) of this section, is defined as the area bounded on the north and west by the coastline of the United States, on the east by the U.S./Canadian maritime boundary, and bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ.

(F) *GOM Winter Flounder Stock Area.* The GOM Winter Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86 and for determining areas applicable to sector allocations of GOM winter flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

GOM WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
GOM1	(1)	70°00′
GOM2	42°20′	70°00′
GOM3	42°20′	67°40′
GOM4	(2)	67°40′
GOM5	(3)	67°40′
GOM6	43°50′	67°40′
GOM7	43°50′	(4)
GOM8	(4)	67°00′
GOM9	(5)	67°00′

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.).

[3] U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).

[4] U.S./Canada maritime boundary.

[5] Intersection of the south-facing ME coastline and 67°00′ W. long.

* * * * *

[FR Doc. 2010–7235 Filed 3–31–10; 4:15 pm]

BILLING CODE 3510–22–P

Reader Aids

Federal Register

Vol. 75, No. 68

Friday, April 9, 2010

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
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**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, APRIL

16325–16640 1
16641–17024 2
17025–17280 5
17281–17554 6
17555–17846 7
17847–18046 8
18047–18376 9

CFR PARTS AFFECTED DURING APRIL

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.

3 CFR

Proclamations:
8487 17025
8488 17837
8489 17839
8490 17841
8491 17843
8492 17845
8493 17847

Administrative Orders:
Memorandums:
Memorandum of April 6, 2010 18045

5 CFR

Proposed Rules:
532 17316
550 18133

7 CFR

1 17555
3 17555
91 17281
205 17555
226 16325
319 17289
735 17555
800 17555
900 17555
916 17027
917 17027
925 17031
944 17031
948 17034
1170 17555
1435 17555

Proposed Rules:
916 17072
917 17072

9 CFR

206 16641

10 CFR

140 16645
431 17036

Proposed Rules:
51 16360
430 ..... 16958, 17075
431 ..... 17078, 17079, 17080

12 CFR

4 17849
205 16580
918 17037
1261 17037

Proposed Rules:
701 17083
708a 17083
708b 17083
1203 17622
1705 17622

14 CFR

27 17041
29 17041
39 ..... 16646, 16648, 16651, 16655, 16657, 16660, 16662, 16664, 17295
67 17047
71 ..... 16329, 16330, 16331, 16333, 16335, 16336, 17851, 17852, 18047
73 17561
91 17041
121 17041
125 17041
135 17041
234 17050

Proposed Rules:
21 18134
23 16676
25 16676
27 16676
29 16676
39 ..... 16361, 16683, 16685, 16689, 16696, 17084, 17086, 17630, 17632, 17879, 17882, 17884, 17887, 17889
71 ..... 17322, 17637, 17891, 17892

15 CFR

740 17052
748 17052
750 17052
762 17052
902 18262
922 17055

16 CFR

Proposed Rules:
312 17089

17 CFR

190 17297
232 17853

18 CFR

40 16914
284 16337

20 CFR

618 16988

21 CFR

Ch. I 16353
10 16345
524 16346
814 16347
1002 16351
1003 16351
1004 16351
1005 16351
1010 16351

1020 16351
1030 16351
1040 16351
1050 16351
Proposed Rules:
165 16363
814 16365
882 17093
890 17093

24 CFR

570 17303

26 CFR

1 17854
301 17854
602 17854

27 CFR

17 16666
19 16666
20 16666
22 16666
24 16666
25 16666
26 16666
27 16666
28 16666
31 16666
40 16666
44 16666
46 16666
70 16666

28 CFR

Proposed Rules:
540 17324

30 CFR

18 17512
74 17512
75 17512
936 18048

32 CFR

199 18051
2004 17305
Proposed Rules:
108 18138
1701 16698

33 CFR

117 ....17561, 18055
165 ....18055, 18056, 18058
167 17562
Proposed Rules:
100 ....16700, 17099, 17103
150 16370
165 ....16370, 16374, 16703, 17106, 17329

34 CFR

Ch. II 16668

36 CFR

Proposed Rules:
1206 17638

37 CFR

Proposed Rules:
380 16377

38 CFR

1 17857
59 17859
Proposed Rules:
17 17641
51 17644
59 17641

39 CFR

111 17861

40 CFR

9 16670
50 17004
51 ....17004, 17254
52 ....16671, 17307, 17863, 17865, 17868, 18061, 18068
70 17004
71 17004
93 17254
180 ....17564, 17566, 17571, 17573, 17579
721 16670
272 17309
Proposed Rules:
52 ....16387, 16388, 16706, 17894, 18142, 18143
98 17331
272 17332
372 17333
721 16706
761 17645

44 CFR

65 ....18070, 18072, 18073, 18076, 18079, 18082, 18084, 18086, 18088, 18090
67 18091

45 CFR

286 17313

46 CFR

393 18095

47 CFR

36 17872
54 ....17584, 17872
73 17874
74 17055
78 17055
Proposed Rules:
27 17349
36 17109

48 CFR

204 18030
206 18035
225 18035
234 18034
235 ....18030, 18034
252 ....18030, 18035
Proposed Rules:
223 18041
252 18041

49 CFR

23 16357
350 17208
385 17208
395 17208
396 17208
571 ....17590, 17604, 17605
Proposed Rules:
172 17111
173 17111
176 17111
383 16391
384 16391
390 16391
391 16391
392 16391
1244 16712

50 CFR

17 ....17062, 17466, 18107
36 16636
300 18110
648 ....17618, 18113, 18262, 18356
665 17070
679 ....16359, 17315
Proposed Rules:
17 ....16404, 17352, 17363, 17667
223 16713
224 16713
648 16716

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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4872/P.L. 111–152
Health Care and Education Reconciliation Act of 2010 (Mar. 30, 2010; 124 Stat. 1029)

H.R. 4957/P.L. 111–153
Federal Aviation Administration Extension Act of 2010 (Mar. 31, 2010; 124 Stat. 1084)

S. 1147/P.L. 111–154
Prevent All Cigarette Trafficking Act of 2009 (Mar. 31, 2010; 124 Stat. 1087)

Last List March 31, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.