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

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0703]

RIN 1625–AA00

Safety Zone; Mississippi River, Mile 427.3 to 427.5

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River, Mile 427.3 to 427.5, extending the entire width of the river. This safety zone is needed to protect persons and vessels from safety hazards associated with a land based firework display occurring on the Upper Mississippi River. Entry into this zone will be prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: This rule is effective from 8 p.m. until 8:30 p.m. on September 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0703 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0703 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant (LT) Rob McCaskey, Sector Upper Mississippi River Response Department at telephone 314–269–2541, e-mail *Rob.E.McCaskey@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." The Coast Guard finds that it would be impracticable to publish a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process could be completed.

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**. Publishing a NPRM and delaying its effective date would be impracticable because immediate action is needed to protect vessels and mariners from the safety hazards associated with a land based fireworks display.

Basis and Purpose

On September 5, 2010 the City of Keithsburg will be conducting a fireworks display at mile 427.4 on the Upper Mississippi River. This event presents safety hazards to the navigation of vessels between mile 427.3 and mile 427.5, extending the entire width of the river. A safety zone around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the fireworks. The Captain of the Port Upper Mississippi River will inform the public of all safety zone changes through broadcast notice to mariners.

Discussion of Rule

The Coast Guard is establishing a safety zone for all waters of the Upper Mississippi River, Mile 427.3 to 427.5, extending the entire width of the river. Entry into this zone will be prohibited to all vessels and persons except participants and those persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River. This rule will be effective from 8 p.m. until 8:30 p.m. CDT on September 5, 2010. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

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 rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because of the very brief duration of the effective period of the zone. Furthermore, the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact.

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 for the following reasons: (1) This rule will only be in effect for a limited period of time; and (2) the local waterway users will be notified via public Broadcast Notice to Mariners.

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, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

Under figure 2–1, paragraph (34)(g), of the Instruction, 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(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0703 to read as follows:

§ 165.T08–0703 Safety Zone; Upper Mississippi River, Mile 427.3 to 427.5.

(a) *Location.* The following area is a safety zone: All waters of the Upper Mississippi River, Mile 427.3 to 427.5 extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 8 p.m. until 8:30 p.m. CDT on September 5, 2010.

(c) *Periods of enforcement.* This rule will be enforced from 8 p.m. until 8:30 p.m. CDT on September 5, 2010. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at 314–269–2332.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 30, 2010.

S.L. Hudson,

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

[FR Doc. 2010–21616 Filed 8–30–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0021]

RIN 1625–AA87

Security Zone; U.S. Coast Guard BSU Seattle, Pier 36, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone at U.S. Coast Guard (USCG) Base Support Unit (BSU) Seattle, Pier 36, Elliot Bay, Seattle, WA. This permanent security zone is necessary to protect military and visiting foreign vessels, waterfront facilities, and the maritime public from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Entry into or movement within this security zone is prohibited without the permission of the Captain of the Port Puget Sound or a Designated Representative.

DATES: This rule is effective September 30, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0021 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0021 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Ashley M. Wanzer, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 3, 2010, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; U.S. Coast Guard BSU Seattle, Pier 36, Seattle, WA in the **Federal Register** (75 FR 23212). We received zero comments on the proposed rule. We did not receive any requests for a public meeting and a public meeting was not held regarding this regulation.

Basis and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels. This rule establishes a security zone to protect waterfront facilities, persons, and vessels from subversive or terrorist acts on the waters surrounding USCG BSU Seattle, Pier 36, Elliot Bay, WA. The Coast Guard Captain of the Port Puget Sound finds sufficient cause to require this security zone to protect military vessels, facilities and the maritime public located at Pier 36, Elliot Bay, WA. This security zone will be continuously activated in order to maintain the security of both moored vessels and permanent facilities regardless of the physical presence of military vessels within the zone.

Discussion of Comments and Changes

We did not receive any comments on the NPRM. Accordingly, we have made no changes from the proposed rule.

Discussion of Rule

This rule establishes a permanent security zone necessary to protect military and visiting foreign vessels, waterfront facilities, and the maritime public from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Entry into or movement within this security zone is prohibited without the permission of the Captain of the Port Puget Sound or a Designated Representative.

Pier 36 is an inlet that provides vessel moorage to Coast Guard and visiting military vessels. The permanent security zone established by this rule extends from the north western tip of Pier 36 across the inlet to the south western tip of Pier 36, effectively closing off the access point such that unauthorized vessels are prohibited from entering the pier.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not a significant regulatory action because it does not adversely affect the transit of maritime vessels or the recreational boating public to major waterways.

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 security zone will not have a significant economic impact on a substantial number of small entities for the following reason: Vessel traffic can pass safely around the security zone.

This security zone will impact the following entities, some of which may be small entities; those vessels or vessel operators who intend to enter BSU Seattle at Pier 36, Seattle, WA.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 a security zone located on all waters east of a line from 47°35.450′ N 122°20.585′ W to 47°35.409′ N 122°20.585′ W at USCG BSU Seattle, Pier 36, Elliot Bay, Seattle, WA. Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.1334 to read as follows:

§ 165.1334 Security Zone; U.S. Coast Guard BSU Seattle, Pier 36, Elliot Bay, Seattle, WA.

(a) *Location:* The following area is a security zone: All waters in Elliot Bay east of a line from 47°35.450′ N 122°20.585′ W to 47°35.409′ N 122°20.585′ W at Pier 36, Elliot Bay, Seattle, WA.

(b) *Regulations:* Under 33 CFR part 165, subpart D, no vessel may enter, transit, moor, or anchor within this security zone located at Pier 36, Elliot Bay, WA, except for vessels authorized by the Captain of the Port Puget Sound or Designated Representative.

(c) *Authorization:* To request authorization to operate within this security zone, contact United States Coast Guard Sector Puget Sound Joint Harbor Operations Center at 206–217–6001.

Dated: August 18, 2010.

S.W. Bornemann,

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

[FR Doc. 2010–21615 Filed 8–30–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Area in Cape Fear River and Tributaries at Sunny Point Army Terminal, Brunswick County, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Direct final rule.

SUMMARY: The U.S. Army requested that the U.S. Army Corps of Engineers (Corps) revise the regulation for the restricted area in the Cape Fear River and its tributaries at Sunny Point Army Terminal, Brunswick County, North Carolina, by renaming the marker buoys and specifying the latitude and longitude for those buoys. There are no other changes proposed for this restricted area regulation. The purpose of the rule is to correct the buoys designating the boundary of the restricted area. The restricted area provides security for the facility, and prevents acts of terrorism, sabotage, or other criminal acts against the facility, including vessels loading and offloading at the Sunny Point Army Terminal.

DATES: This rule is effective November 1, 2010 without further notice, unless the Corps receives adverse comment by September 30, 2010. If we receive such adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You may submit comments, identified by docket number COE–2010–0015, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number COE–2010–0015 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, *Attn:* CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2010–0015. All comments received will be included in the public docket without change and may be made available on-line at *http://regulations.gov*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Richard K. Spencer, U.S. Army Corps of Engineers, Wilmington District, at 910–251–4172.

SUPPLEMENTARY INFORMATION: By letter dated February 22, 2010, the Corps of Engineers was informed that the federal channel navigation buoys that mark the Cape Fear River main navigation channel and the boundaries of the restricted zone at the Sunny Point Army Terminal have been replaced with new buoys. The Army requests that the rule be revised because the current federal channel navigation buoys identification numbers no longer correspond to the regulation for the restricted area at the Sunny Point Army Terminal. In response to this request by the U.S. Army, and pursuant to its authorities under Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR part 334 by revising the restricted area regulation.

The Corps is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comment.

In the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to revise this restricted area regulation if adverse comments are filed. This rule will be effective on November 1, 2010 without further notice unless we receive adverse comment by September 30, 2010 . If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the direct final 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 at this time.

Procedural Requirements

a. *Review Under Executive Order 12866.* This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). The Corps has determined that revising this restricted area regulation would have practically no economic impact on the public, or result in no anticipated navigational hazard or interference with existing waterway traffic. This will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* The Corps expects that the final rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared and it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT,** above. If we receive adverse comment, an environmental assessment will be prepared for the subsequent final rule.

d. *Unfunded Mandates Act.* The final rule does not impose an enforceable duty among the private sector and, therefore, are not a Federal private sector mandate and are not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.450 as follows:

§ 334.450 Cape Fear River and tributaries at Sunny Point Army Terminal, Brunswick County, NC; restricted area.

(a) *The area.* That portion of Cape Fear River due west of the main ship channel extending from U.S. Coast Guard buoy No. 35 (34°02′03.218″ N, 077°56′28.755″ W) at the north approach channel to Sunny Point Army Terminal to U.S. Coast Guard buoy No. 27 (33°58′16.12″ N, 077°56′59.736″ W) at the south approach channel to Sunny Point Army Terminal and all waters of its tributaries therein.

(b) Except in cases of extreme emergency, all persons or vessels of any size or rafts other than those authorized by the Commander, Sunny Point Army Terminal, are prohibited from entering this area without prior permission of the enforcing agency.

(c) The regulations in this section shall be enforced by the Commander, Sunny Point Army Terminal, Southport, North Carolina, and such agencies as he/she may designate.

Dated: August 13, 2010.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010–21752 Filed 8–30–10; 8:45 am]

BILLING CODE 3720–58–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 386

[Docket No. 2010–4 CRB Satellite Rate]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations setting the rates for the satellite carrier statutory license of the Copyright Act for the license period 2010–2014.

DATES: *Effective Date:* August 31, 2010.

Applicability Dates: These regulations apply to the license period January 1, 2010, to December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On June 9, 2010, the Copyright Royalty Judges ("Judges") received from the Program Suppliers and the Joint Sports Claimants (collectively, the "Copyright Owners") and DIRECTV, Inc., DISH Network, LLC, and National Programming Service, LLC (collectively, the "Satellite Carriers") a voluntary agreement negotiated pursuant to 17 U.S.C. 119 proposing rates for the satellite carrier statutory license for the period 2010–2014. The Copyright Owners and Satellite Carriers requested that the proposed rates be applied to all satellite carriers, distributors and copyright owners without holding a rate proceeding. *See* 17 U.S.C. 119(c)(1)(D)(ii)(I). As required by section 119(c)(1)(D)(ii)(II), the Judges published for comment the proposed rates in the **Federal Register.** 75 FR 39891 (July 13, 2010).

Section 119(c)(1)(D)(ii)(III) provides that the Judges shall adopt the negotiated rates "unless a party with an intent to participate in the proceeding and a significant interest in the outcome of that proceeding objects under clause (II)." Objections to the proposed rates were to be submitted no later than August 12, 2010. No objections were submitted.

Having received no objections to the proposed rates, the Judges are now adopting as final the proposed rates as published on July 13, 2010. *See* 75 FR 39891.

List of Subjects in 37 CFR Part 386

Copyright, Satellite, Television.

Final Regulations

■ For the reasons set forth in the preamble, the Copyright Royalty Judges are adding part 386 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

Sec.
386.1 General.
386.2 Royalty fee for secondary transmission by satellite carriers.

Authority: 17 U.S.C. 119(c), 801(b)(1).

§ 386.1 General.

This part 386 adjusts the rates of royalties payable under the statutory license for the secondary transmission of broadcast stations under 17 U.S.C. 119.

§ 386.2 Royalty fee for secondary transmission by satellite carriers.

(a) *General.* (1) For purposes of this section, *Per subscriber per month* shall mean for each subscriber subscribing to the station in question (or to a package including such station) on the last day of a given month.

(2) In the case of a station engaged in digital multicasting, the rates set forth in paragraph (b) of this section shall apply to each digital stream that a satellite carrier or distributor retransmits pursuant to 17 U.S.C. 119, provided however that no additional royalty shall be paid for the carriage of any material related to the programming on such stream.

(b) *Rates*—(1) *Private home viewing.* The rates applicable to Satellite Carriers' carriage of each broadcast signal for private home viewing shall be as follows:

(i) 2010: 25 cents per subscriber per month (for each month of 2010);

(ii) 2011: The 2010 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items for October 2009 to October 2010;

(iii) 2012: The 2011 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items for October 2010 to October 2011;

(iv) 2013: The 2012 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2011 to October 2012;

(v) 2014: The 2013 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2012 to October 2013.

(2) *Viewing in commercial establishments.* The rates applicable to Satellite Carriers' carriage of each broadcast signal for viewing in commercial establishments shall be as follows:

(i) 2010: 50 cents per subscriber per month (for each month of 2010);

(ii) 2011: The 2010 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2009 to October 2010;

(iii) 2012: The 2011 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2010 to October 2011;

(iv) 2013: The 2012 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items for October 2011 to October 2012;

(v) 2014: The 2013 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers All Items from October 2012 to October 2013.

Dated: August 26, 2010.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2010–21684 Filed 8–30–10; 8:45 am]

BILLING CODE 1410–72–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AN14

Deceased Indebted Servicemembers and Veterans: Authority Concerning Certain Indebtedness

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations to implement certain statutory provisions that grant limited authority to the Secretary of Veterans Affairs to terminate collection action on certain debts arising from a VA benefit program when the indebted individual is a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities on or after September 11, 2001, and to refund amounts collected after the individual's death. This document also implements statutory provisions that grant the Secretary discretionary authority to suspend or terminate collection of debts owed to VA by individuals who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy, and to refund amounts collected after the individual's death.

DATES: *Effective Date:* September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Financial Policy (047G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–6487. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 30, 2008, Congress enacted the Combat Veterans Debt Elimination Act of 2008, Public Law 110–252, of which section 1303 amended chapter 53 of title 38, United States Code, to add a new section (38 U.S.C. 5302A) to grant limited authority to the Secretary of Veterans Affairs to terminate collection action on certain debts arising from an individual's indebtedness from a VA benefit program.

The indebted individual must be a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations, as determined by the Secretary in consultation with the Secretary of Defense, in a war or in combat against a hostile force during a period of hostilities on or after September 11, 2001. This authority may be exercised in the Secretary's discretion when determined to be in the best interest of the United States. This authority does not apply to any amounts owed the United States under any program carried out under the authority of 38 U.S.C. chapter 37 relating to housing and small business loans. This legislation eliminates the need to contact family members and avoids further hardship on them. Instead, it demonstrates appreciation for sacrifice on behalf of a grateful Nation.

Section 1303 of Public Law 110–252 also states that in any case where all or any part of a debt of a covered individual, as described in 38 U.S.C. 5302A(a), was collected on or after September 11, 2001, but before the date of Public Law 110–252, enacted on June 30, 2008, the Secretary may refund the amount collected if, in the Secretary's determination, collection of the indebtedness would have been terminated had section 5302A been in effect at the time, and the individual is equitably entitled to such a refund.

On October 10, 2008, Congress enacted the Veterans' Benefits Improvement Act of 2008, Public Law 110–389, of which section 801 amended 31 U.S.C. 3711(f) to grant limited authority to the Secretary to suspend or terminate action by the Secretary to collect a claim against the estate of a person who died while serving on active duty as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy. The Secretary must determine that, under circumstances applicable with respect to the deceased person, it is appropriate to do so. Section 801 of Public Law 110–389 also grants the Secretary the authority to refund to the estate of the deceased member any amount collected by the Secretary from a member who died while serving on active duty as a member of the Armed Forces if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so, whether collected before, on, or after October 10, 2008.

In a document published in the **Federal Register** on August 7, 2009, VA published the proposed rule associated with this document, *see* 74 FR 39589, which would implement the provisions of 38 U.S.C. 5302A and 31 U.S.C. 3711(f). In that document, we proposed to add 38 CFR 1.945 to implement the Secretary's limited authority to suspend or terminate collection action on certain debts arising from an individual's indebtedness from a VA benefit program. Under proposed § 1.945, the individual must either be a person who died while serving on active duty after September 11, 2001, as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard during a period when the Coast Guard is operating as a service in the Navy or the individual must be a member of the Armed Forces or a veteran who dies as a result of injury incurred or aggravated in the line of duty while serving in a theater of combat operations, as determined by the Secretary in consultation with the Secretary of Defense, in a war or in combat against a hostile force during a period of hostilities after September 11, 2001.

We proposed that this authority would be exercised in the Secretary's discretion when determined to be in the best interest of the United States. The Secretary's authority under proposed § 1.945 would not apply to any amounts owed the United States under any program carried out under the authority of 38 U.S.C. chapter 37 relating to housing and small business loans. The proposed rule also stated that in any case where all or any part of a debt of a covered individual, as described in 38 U.S.C. 5302A(a), was collected after September 11, 2001, the Secretary may refund the amount collected if, in the Secretary's determination, collection of the indebtedness would have been terminated had section 5302A been in effect at the time and the individual is equitably entitled to such a refund and only if the Secretary determines that the deceased individual is equitably entitled to the refund. The Secretary would also be authorized to refund to the estate of a deceased individual who died while serving on active duty as a member of the Armed Forces any amount collected by the Secretary from that member if the Secretary determines that, under the circumstances applicable with respect to the deceased member, it is appropriate to do so.

We provided a 60-day comment period, which ended on October 6, 2009. We received two comments during this period.

The first commenter expressed concern about "placing emphasis on the date of death" of the service member and suggested that we broaden the scope of the regulation to include those who died in the line of duty prior to September 11, 2001. The commenter stated, "any person that has voluntarily put themselves in the position to protect our country and its citizens should be extended this benefit regardless of a date of death."

In enacting Public Law 110–252, Congress limited the scope of 38 U.S.C. 5302A to those members of the Armed Forces and veterans who died on or after September 11, 2001. Public Law 110–389, applies to a person who died while serving on active duty and explains that the Secretary may refund to the estate of such person any amount previously collected on a VA claim regardless of whether such collection was before, on, or after the date of enactment of that law. Further, in enacting Public Law 110–389, Congress limited the scope of 31 U.S.C. 3711(f) to members of the Armed Forces who die on active duty. This law provides the Secretary with discretionary authority to suspend or terminate collection action and to refund amounts previously collected. Based upon this authority granted by Congress, we limited refunds to the estate or next-of-kin of servicemembers or veterans who served on active duty on or after September 11, 2001. We believe that this ensures consistency and we will not make any changes to this rulemaking based upon this comment.

The second commenter had several suggestions for expanding the scope of the rule including the following: (1) Providing specific language to include deaths related to post-traumatic stress disorder (PTSD) where the death of the veteran occurred well after combat; (2) distributing any refunds directly to the person responsible for the payment of the debt, rather than automatically distributing it to the deceased's estate or next-of-kin; (3) developing a system to minimize or eliminate debt-related contact with the decedent's family; (4) engaging the public and families directly to let them know a refund may be possible and to provide information on how to maneuver the process of obtaining a refund; and (5) expanding such debt relief to all debt, not just debt owed to VA. We will not make any changes to this rulemaking based upon these suggestions.

Regarding the request that we include specific language concerning PTSD-related deaths, the language of 38 U.S.C. 5302A authorizes the Secretary to terminate collection action on debts owed by a member of the Armed Forces or a veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations after September 11, 2001. The type of relief proposed by the commenter is beyond the authority of that statute because PTSD is considered a disease and not an injury. We note, however, that the language of 31 U.S.C. 3711(f)(3) does not contain the same limitation; rather the Secretary may suspend or terminate collection of a debt of any person who dies while serving on active duty if under the circumstances it would be appropriate to do so. Therefore, the type of relief proposed by the commenter for deaths associated with diseases while serving on active duty may be appropriate under 31 U.S.C. 3711(f)(3). The final rule in § 1.945(a) provides the Secretary may suspend or terminate collection under this statute for any person who dies on active duty when the Secretary determines such action is appropriate and in the best interest of the United States. We made no changes to the final rule based on this comment.

The second commenter also suggested that the distribution of any refunds go directly to the person responsible for payment of the debt, rather than automatic distribution to the deceased's estate or next-of-kin. VA's authority under title 38, United States Code, is generally limited to providing benefits for veterans and their survivors. Refunds are for the express purpose of providing relief to the families of certain indebted servicemembers or veterans. We believe that Congress intended that VA, in appropriate cases, would refund previously collected funds first to the decedent's estate and, if there is no estate, then to the decedent's surviving family members in the same order that VA pays accrued benefits to survivors under 38 U.S.C. 5121(a)(2). Therefore, this final rule implements our interpretation of Congressional intent with respect to the distribution of refunds. VA will refund previously collected funds to the decedent's estate or, absent an estate, to the decedent's next-of-kin in the following order: the decedent's spouse, the decedent's children (in equal shares), or the decedent's parents (in equal shares).

Next, the commenter asked whether a system could be developed to minimize or eliminate debt-related contact with the decedent's family. In doing so, the commenter suggested that the decedent's family should be notified of any termination or suspension of collection action, or the refund of any collected debt at the same time as they are notified by the Department of Defense (DoD) of the decedent's death. We do not believe that this suggestion can be implemented, primarily because DoD's goal is to provide the service member's family with the notification of death as quickly as possible. The VA process to determine whether the debt should be suspended or terminated or a refund issued, while done quickly, might not be completed prior to DoD providing notification of death to the next-of-kin. In addition, DoD has no authority to make a determination concerning the collection, termination, and suspension of debts owed to VA or the refund of any collected debt. It is the sole authority of VA to make the determination for collection action on all cases arising from a VA benefit program.

The commenter also suggested that VA engage the public and families directly to let them know a refund may be possible and to provide information on how to maneuver the process of obtaining a refund. As authorized by sections 5302A and 3711(f), VA will limit refunds to the estates of deceased service members or veterans or their next-of-kin to ensure consistency in the refund of money. The next-of-kin will not need to initiate a request for a

refund. The refunds will be processed automatically within VA and submitted to the Secretary for approval.

Finally, the commenter expressed his belief that all debt, not just debt owed to VA, should be forgiven for those who qualify under this final rule. Unfortunately, while we understand the commenter's concerns, our rulemaking authority is limited by sections 5302A and 3711(f) to cancellation of collection actions pertaining to debts owed to VA.

We note that section 1303 of Public Law 110–252 states that the law shall apply to those who died "on or after" September 11, 2001. However, 38 U.S.C. 5302A(b) authorizes the Secretary to take action regarding certain debts of individuals who die "after September 11, 2001." The plain language of Public Law 110–252 clearly indicates that Congress intended to include the debts of those who died on September 11, 2001. Moreover, a public law provision generally prevails over a United States Code provision when there is an inconsistency. *See Stephan* v. *United States,* 319 U.S. 423, 426 (1943) (U.S. Code "cannot prevail over the Statutes at Large when the two are inconsistent"); *Patten* v. *United States,* 116 F.3d 1029, 1034 n. 3 (4th Cir. 1997) (legislation enacted as a section of a public law and signed by the President had the force of law even though it was not codified). In light of the plain language of section 1303 and Congress' intent to liberalize the law regarding debts owed by individuals who die in combat or as a result of injuries incurred in combat, this final rule implements the public law provision and authorizes the Secretary to take action regarding indebted individuals who die on or after September 11, 2001.

Based on the rationale set forth in the preamble to the proposed rule and in this preamble, VA is adopting the provisions of the proposed rule as a final rule with one change as noted above.

Paperwork Reduction Act

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

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action" requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as any regulatory action this is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Program

There is no Catalog of Federal Domestic Assistance program number applicable to this final rule.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on August 25, 2010 for publication.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedure, Archives and records, Cemeteries, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Dated: August 26, 2010.

Robert C. McFetridge,

Director, Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

■ For the reasons stated in the preamble, VA amends 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. The authority citation preceding § 1.900 is revised to read as follows:

Authority: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, 5302, 5302A, 5314, and as noted in specific sections.

■ 3. Amend § 1.940 by adding introductory text, to read as follows:

§ 1.940 Scope and application.

Except as otherwise provided in § 1.945:

* * * * *

■ 4. Add § 1.945 to read as follows:

§ 1.945 Authority to suspend or terminate collection action on certain benefit indebtedness; authority for refunds.

(a) The Secretary of Veterans Affairs (Secretary) may suspend or terminate collection action on all or any part of an indebtedness owed to VA by a member of the Armed Forces who dies while on active duty, if the Secretary determines that such suspension or termination of collection is appropriate and in the best interest of the United States.

(b) The Secretary may terminate collection action on all or any part of an amount owed to the United States for an indebtedness resulting from an individual's participation in a benefits program administered by the Secretary,

other than a program as described in paragraph (h) of this section, if the Secretary determines that such termination of collection is in the best interest of the United States. For purposes of this paragraph, an *individual* is any member of the Armed Forces or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations in a war or in combat against a hostile force during a period of hostilities on or after September 11, 2001.

(c) For purposes of this section:

(1) *Theater of combat operations* means the geographic area of operations where the Secretary in consultation with the Secretary of Defense determines that combat occurred.

(2) *Period of hostilities* means an armed conflict in which members of the United States Armed Forces are subjected to danger comparable to danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

(d) The Secretary may refund amounts collected after the death of a member of the Armed Forces or veteran in accordance with this paragraph and paragraph (e) of this section.

(1) In any case where all or any part of a debt of a member of the Armed Forces, as described under paragraph (a) of this section, was collected, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been suspended or terminated under authority of 31 U.S.C. 3711(f). The member of the Armed Services must have been serving on active duty on or after September 11, 2001. In any case where all or any part of a debt of a covered member of the Armed Forces was collected, the Secretary may refund the amount collected, but only if the Secretary determines that, under the circumstances applicable with respect to the deceased member of the Armed Forces, it is appropriate to do so.

(2) In any case where all or any part of a debt of a covered member of the Armed Forces or veteran, as described under paragraph (b) of this section, was collected on or after September 11, 2001, the Secretary may refund the amount collected if, in the Secretary's determination, the indebtedness would have been terminated under authority of 38 U.S.C. 5302A. In addition, the Secretary may refund the amount only if he or she determines that the deceased individual is equitably entitled to the refund.

(e) Refunds under paragraph (d) of this section will be made to the estate of the decedent or, in its absence, to the decedent's next-of-kin in the order listed below.

(1) The decedent's spouse.

(2) The decedent's children (in equal shares).

(3) The decedent's parents (in equal shares).

(f) The authority exercised by the Secretary to suspend or terminate collection action and/or refund amounts collected on certain indebtedness is reserved to the Secretary and will not be delegated.

(g) Requests for a determination to suspend or terminate collection action and/or refund amounts previously collected as described in this section will be submitted to the Office of the Secretary through the Office of the General Counsel. Such requests for suspension or termination and/or refund may be initiated by the head of the VA administration having responsibility for the program that gave rise to the indebtedness, or any concerned staff office, or by the Chairman of the Board of Veterans' Appeals. When a recommendation for refund under this section is initiated by the head of a staff office, or by the Chairman, Board of Veterans' Appeals, the views of the head of the administration that administers the program that gave rise to the indebtedness will be obtained and transmitted with the recommendation of the initiating office.

(h) The provisions of this section concerning suspension or termination of collection actions and the refunding of moneys previously collected do not apply to any amounts owed the United States under any program carried out under 38 U.S.C. chapter 37.

(Authority: 38 U.S.C. 501, 5302A; 31 U.S.C. 3711(f)).

[FR Doc. 2010–21668 Filed 8–30–10; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN54

Diseases Associated With Exposure to Certain Herbicide Agents (Hairy Cell Leukemia and Other Chronic B-Cell Leukemias, Parkinson's Disease and Ischemic Heart Disease)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection for certain diseases based upon the most recent National Academy of Sciences (NAS) Institute of Medicine committee report, Veterans and Agent Orange: Update 2008 (Update 2008). This amendment is necessary to implement the decision of the Secretary of Veterans Affairs that there is a positive association between exposure to certain herbicides and the subsequent development of hairy cell leukemia and other chronic B-cell leukemias, Parkinson's disease, and ischemic heart disease. The effect of this amendment is to establish presumptive service connection for these diseases based on herbicide exposure.

DATES: *Effective Date:* This final rule is effective August 31, 2010. This final rule is a major rule and the implementation of this rule is subject to the provisions of the Congressional Review Act (CRA). The CRA provides for a 60-day waiting period before an agency may implement a major rule to allow Congress the opportunity to review the regulation. The impact of the CRA will require at least a 60-day delay between the issuance of the final regulation and when VA can begin paying benefits.

Applicability Date: This final rule shall apply to claims received by VA on or after the date of publication of the final rule in the **Federal Register** and to claims pending before VA on that date. Additionally, VA will apply this rule in readjudicating certain previously denied claims as required by court orders in *Nehmer* v. *Department of Veterans Affairs,* No. CV–86–6161 TEH (N.D. Cal.) (*Nehmer*).

FOR FURTHER INFORMATION CONTACT: Thomas J. Kniffen, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 25, 2010, VA published in the **Federal Register** (75 FR 14391) a proposal to amend 38 CFR 3.309 to add hairy cell leukemia and other chronic B-cell leukemias, Parkinson's disease and ischemic heart disease to the list of diseases subject to presumptive service connection based on herbicide exposure. Interested persons were invited to submit written comments on or before April 26, 2010. VA received 670 comments on the proposed rule. Overall, the comments VA received are

in favor of the Secretary's decision to establish the new presumption of service connection for hairy cell leukemia and other chronic B-cell leukemias, Parkinson's disease and ischemic heart disease.

VA received comments from service organizations, including Vietnam Veterans of America, Inc. (VVA), The Blue Water Navy Vietnam Veterans Association (BWNVVA), and other organizations, which include The Parkinson's Action Network, National Parkinson's Foundation, U.S. Military Veterans with Parkinson's (USMVP), Team Parkinson, Parkinson's Focus Today, Middle Tennessee Chapter of the American Parkinson Disease Association, Froedtert & The Medical College of Wisconsin, and the National Organization of Veterans' Advocates, as well as from individuals. Those comments, which have been grouped by category, are addressed below.

VA also received numerous comments from veterans and surviving spouses regarding their individual claims for veterans' benefits. We do not respond to these comments in this notice as they are beyond the scope of this rulemaking.

A. Comments Concerning the Effective Date

VA received more than 20 comments concerning the effective date of the regulation. Comments included suggestions that this rule should be effective on the date the Secretary announced his decision to establish the new presumptives or on the date an eligible veteran incurred one of the presumptive diseases. Other commenters stated that the rule should be effective when an eligible veteran was diagnosed with a presumptive disease, rather than when the veteran submitted a claim for compensation.

VA Response: The proposed rule did not state when this regulation will be effective. The final rule makes clear that the effective date of this rule is the date of publication in the **Federal Register**. This is consistent with the terms of section 1116, title 38, United States Code (U.S.C.), which provides detailed instructions as to promulgation of regulations relating to presumptions of service connection for diseases associated with herbicide agents, including the effective date for such rules. The statute prescribes that when the Secretary determines that such a presumption is warranted, the Secretary "shall issue proposed regulations setting forth [the] determination." 38 U.S.C. 1116(c)(1)(A). The Secretary must then "issue final regulations" which "shall be effective on the date of issuance." 38 U.S.C. 1116(c)(2). Many of the comments received about the effective date of the regulation encouraged VA to establish an effective date earlier than the date of issuance of the final rule for equitable reasons. These comments include statements that it would be more appropriate to compensate veterans back to when the newly established presumptive disease was diagnosed or when they became disabled. Other commenters stated that veterans who filed claims years ago that had little chance of being granted will now receive large retroactive awards but those who did not file such claims will be penalized for not filing such claims. As the governing statute mandates that the effective date of the new regulation be the date of issuance of the final rule the Secretary of Veterans Affairs has no discretion to set an effective date for the new presumptions earlier than the date the final regulation is issued.

Significantly, however, VA may pay benefits for periods prior to the rule's effective date in certain circumstances which are set forth in detail in 38 CFR 3.816(c) and (d). These provisions, which implement a stipulation and various court orders in the *Nehmer* class action litigation, pertain to claims where VA previously denied benefits or VA received a claim for benefits for a newly added condition between September 25, 1985, and the date VA publishes the final regulation adding the new condition to the list of diseases presumptively associated with exposure to herbicides used in Vietnam.

As set forth in 38 CFR 3.816(c) and (d), the effective date for such claims is the *later* of the date VA received the above described claim or the date the disability arose. As a result, effective dates for benefits earlier than the date the final regulation is issued may be assigned in cases governed by the *Nehmer* litigation. This means that in many cases veterans and their dependents who filed claims prior to the issuance of the final rule will be awarded retroactive benefits to the date the claim was filed. However, even in *Nehmer* cases there is no basis for a retroactive award of benefits based solely upon the date a condition was incurred or diagnosed, or when the veterans became disabled. Under 38 U.S.C. 5110(a), VA generally may not pay benefits for any period prior to the date it receives an application for those benefits.

We recognize the concern stated by some commenters that the retroactive payments authorized under *Nehmer* do not extend to persons who refrained from filing prior claims that they reasonably believed would not have been granted at that time. As explained above, however, VA generally cannot pay benefits prior to the date of a claim for benefits. Ordinarily, when VA establishes a new presumption of service connection, it cannot pay retroactive benefits for any period before the new presumption takes effect, due to the operation of 38 U.S.C. 5110(g). The *Nehmer* court orders create a limited exception to that statutory rule for cases where a *Nehmer* class member filed a claim before the new rule took effect. VA does not have authority to further expand that judicial exception in a manner that would conflict with the governing statutes.

B. Comments Regarding the Addition of Parkinson's Disease to VA's List of Presumptive Diseases

VA received nearly 400 comments in favor of the proposed regulation from individuals and organizations that, for various reasons, support the addition of Parkinson's disease to VA's regulation listing diseases that are presumptively service connected based upon exposure to herbicides used in Vietnam. Many of these comments also suggest that VA clarify its definition of Parkinson's disease, to include diseases of Parkinsonism (primary, atypical, and secondary Parkinson's diseases) and secondary Parkinsonism syndromes, as well as other Parkinsonian disorders.

VA Response: Update 2008 only evaluated the correlation between certain herbicide exposure and Parkinson's disease. Parkinsonism, and other similar diseases, is not the same disease as Parkinson's disease. According to Update 2008,

> PD [Parkinson's Disease] must be distinguished from a variety of parkinsonian syndromes, including drug-induced parkinsonism and neurodegenerative diseases, such as multiple systems atrophy, which have parkinsonian features combined with other abnormalities * * * Pathologic findings in other causes of parkinsonism show different patterns of brain injury [than with PD].

Institute of Medicine of the National Academies, *Veterans and Agent Orange: Update 2008,* The National Academies Press (Washington, DC, 2009), pp. 515–16; available online at *http://www.nap.edu/openbook.php?record_id=12662&page=515* (accessed May 19, 2010).

VA greatly appreciates the outpouring of support of the proposed regulation by individuals affected by Parkinson's disease and organizations that advocate on behalf of the Parkinson's community. VA is not, however, able to revise the definition of Parkinson's disease to include Parkinsonism within this presumptive category. We understand that there are differing views in the

medical community concerning the clinical and pathological features of Parkinson's disease and other diseases that manifest similar symptoms. In VA's view, medical evidence, as described in Update 2008, simply does not support the expansion of the definition to include Parkinsonism and/or Parkinsonian syndromes and/or similar conditions at this time. If the Institute of Medicine (IOM) provides additional guidance regarding Parkinsonism, secondary Parkinsonian disorders, Parkinsonian syndromes or other similar conditions, and/or the synergistic effects of exposure to a combination of herbicides in future reports, VA will, of course, consider that guidance in assessing whether additional presumptive diseases should be added and/or whether its regulatory definitions should be revised. As acknowledged by the IOM in Update 2008, "the preponderance of epidemiologic evidence now supports an association between herbicide exposure and PD." The IOM, however, also expressed concerns about the "lack of data relating PD incidence to exposure in the Vietnam-Veteran population" and "recommend[ed] strongly that studies to produce such data be performed." To that end, the IOM stated "we are also concerned that a biologic mechanism by which the chemicals of interest may cause PD has not been demonstrated."

Institute of Medicine of the National Academies, *Veterans and Agent Orange: Update 2008,* The National Academies Press (Washington DC, 2009), pp. 526–27; available online at *http://www.nap.edu/openbook.php?record_id=12662&page=526* (accessed June 15, 2010).

Expansion of VA's definition beyond Parkinson's disease is not warranted under such circumstances, particularly in light of the IOM's findings quoted above that "PD must be distinguished from a variety of [P]arkinsonian syndromes." Accordingly, VA makes no change based on comments requesting a broader and/or more inclusive regulatory definition of Parkinson's disease.

Included in the comments received concerning the addition of Parkinson's disease to VA's list of presumptive conditions were comments suggesting that VA make various improvements regarding procedures and services provided to veterans with Parkinson's disease and their caregivers. These suggestions, which range from conducting additional research and studies regarding Parkinson's disease and other similar conditions to revising the VA Schedule for Rating Disabilities, are beyond the scope of this rulemaking and will not be addressed.

C. Comments Concerning VA's Definition of Ischemic Heart Disease (IHD)

(1) Lack of Reference to ICD–9–CM Medical Terminology and Codes

One commenter expressed concern that VA regulations do not include any references to The International Classification of Diseases, 9th Revision, Clinical Modification, Sixth Edition (ICD–9 CM) codes in addition to the cited definition of IHD from *Harrison's Principles of Internal Medicine* (Harrison's Online, Chapter 237, Ischemic Heart Disease, 2008). The commenter is concerned that a VA employee reviewing a claim for disability would be "limited to the narrow and probably not extensive enough scope of representative criteria provided by the VA's definition."

VA Response: VA believes that the definition of IHD in the proposed rule and the clarifying description in the preamble to the proposed rule are actually more accommodating to appropriate ratings determinations than ICD–9–CM because the description of IHD contained in the proposed rule is not restricted to a finite list of diagnoses as would be the case if ICD–9–CM codes were employed. To this end, for purposes of establishing service connection VA interprets IHD, as referred to in the regulation, as encompassing any atherosclerotic heart disease resulting in clinically significant ischemia or requiring coronary revascularization.

VA views ICD–9–CM as a reference tool "used to code and classify morbidity data from the inpatient and outpatient records, physician offices, and most National Center for Health Statistics (NCHS) surveys." Centers for Disease Control and Prevention, *ICD—Classification of Diseases, Functioning, and Disability,* available at *http://www.cdc.gov/nchs/icd.htm* (accessed May 13, 2010). It serves as a standardized listing of diseases designed to facilitate effective communication between medical personnel. It does not contain any descriptive definition of IHD; therefore, it does not provide any additional assistance to either VA employees or veterans in understanding what constitutes IHD or what criteria must be used in making a medical diagnosis of such.

Consequently, VA chose to base its definition of Ischemic Heart disease upon the definition contained in a leading medical treatise, *Harrison's Principles of Internal Medicine,* and does not believe it is necessary to revise that definition to include ICD–9–CM references. VA makes no change based on this comment.

(2) Exclusion of Diseases That Do Not Result in Oxygen Deficiency in the Heart

Three commenters expressed a desire for VA to expand the definition of IHD to include diseases (such as hypertension, peripheral arterial disease, and stroke) that are potentially secondarily connected to IHD.

VA Response: In the preamble to the proposed rule, VA, citing *Harrison's Principles of Internal Medicine*—a respected and universally recognized reference in the medical community, clarified and explained the definition of IHD as "an inadequate supply of blood and oxygen to a portion of the myocardium; it typically occurs when there is an imbalance between myocardial oxygen supply and demand." 75 FR 14393; *See Harrison's Principles of Internal Medicine* (Harrison's Online, Chapter 237, Ischemic Heart Disease, 2008). This definition is limited to conditions that directly affect the myocardium. "Myocardium" is defined as "the middle muscular layer of the heart wall." Merriam-Webster Dictionary Online, "Myocardium" available at *http://www.merriam-webster.com/dictionary/myocardium* (accessed May 13, 2010). Therefore, based on the definition found in *Harrison's,* IHD pertains only to conditions that directly affect the muscles of the heart. The accepted medical definition of IHD does not extend to other conditions, such as hypertension, peripheral artery disease, and stroke, that do not directly affect the muscles of the heart. As a result, VA will not include these conditions within the definition of IHD contained in this rulemaking.

Additionally, this definition and limitation are consistent with the definition of IHD used by the IOM in Update 2008. IOM limited its consideration of IHD studies to ICD–9–CM codes 410–414. These codes explicitly exclude such disease as hypertension, which has its own unique code (402) in ICD–9–CM. The selection of these particular ICD–9–CM codes shows that IOM chose to limit its consideration of IHD to only those diseases that affect the muscles of the heart. Hence, the definition of IHD used by IOM in Update 2008 confirms the medical soundness of VA's definition, and makes clear that the medical evidence on which VA based its decision relates only to those conditions directly affecting the oxygen supply in

the muscles of the heart and does not encompass such conditions as hypertension. Therefore, VA makes no change based on these comments.

Two of these commenters would also have VA allow excluded conditions to be rated as secondarily caused by IHD.

VA Response: The presumptive conditions addressed in this rulemaking only concern establishment of a primary service-connected condition. This rulemaking does not affect a claimant's ability to establish secondary conditions proximately caused by a service-connected condition, including those conditions for which service connection is established presumptively. Section 3.310, title 38, Code of Federal Regulations, states that any disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. This principle has not changed and there is no need to reiterate it in this rule. Therefore, VA makes no change based on these comments.

(3) Perceived Uncertainty Concerning the Definition of IHD

One commenter queried "what is ischemic heart disease"?

VA Response: VA's definition of IHD in the proposed rule is based upon the accepted medical premise that, as stated in the preamble, IHD is "an inadequate supply of blood and oxygen to a portion of the myocardium; it typically occurs when there is an imbalance between myocardial oxygen supply and demand." 75 FR 14393; *See Harrison's Principles of Internal Medicine* (Harrison's Online, Chapter 237, Ischemic Heart Disease, 2008). As previously stated, VA interprets IHD, for purposes of service connection, to encompass any atherosclerotic heart disease resulting in clinically significant ischemia or requiring coronary revascularization. In the notice of proposed rulemaking, we explained that the term "ischemic heart disease" does not encompass hypertension or peripheral manifestations of arteriosclerotic heart disease, such as peripheral vascular disease or stroke. To ensure that lay readers are aware of the distinction between these diseases, we are adding a Note 3 following 38 CFR 3.309(e) to include the information stated in the notice of proposed rulemaking.

(4) Inclusion of Angina as a Compensable Disability

One commenter asked whether the rule will include Prinzmetal's Angina, and Stable and Unstable Angina in the list of compensable disabilities.

VA Response: Prinzmetal's Angina, and Stable and Unstable Angina are explicitly included as forms of IHD in the list of illnesses that may be presumptively service connected due to exposure to certain herbicides. 75 FR 14393.

D. Comments Concerning the Scope of Applicability of the Presumptions

(1) Expanding the Presumption of Herbicide Exposure Beyond Service in the Republic of Vietnam

Approximately ten commenters advocated expanding coverage geographically, to include veterans who did not deploy within the land borders of the Republic of Vietnam, but may have been exposed to tactical herbicides in the course of their military service. For example, one commenter, the Vietnam Veterans of America (VVA), cited Update 2008 in support of its recommendation that VA adopt a presumption that veterans who served in the South China Sea during the Vietnam era were exposed to herbicides. Another commenter encouraged amending 38 CFR 3.307(a)(6)(iii), to include "Blue Water Navy Veterans" as qualifying for the presumptions listed in 38 CFR 3.309(e).

VA Response: These comments are beyond the scope of this rulemaking. We proposed to revise 38 CFR 3.309(e) to implement the requirements of 38 U.S.C. 1116(b) and (c) directing the Secretary of Veterans Affairs to determine whether there is a positive association between exposure to the herbicides used in Vietnam and the occurrence of specific diseases. The issue of which diseases are associated with herbicide exposure is distinct from the issue of which individuals are presumed to have been exposed to herbicides in service. The latter issue is governed by a separate regulation in 38 CFR 3.307(a)(6)(iii), which we did not propose to revise in this rulemaking. Accordingly, we make no change based on these comments.

With respect to the issues raised by these comments, we note that, in a separate rulemaking (RIN 2900–AN27, Herbicide Exposure and Veterans With Covered Service in Korea), VA has proposed to provide a presumption of exposure to tactical herbicides for veterans who served with specific military units stationed at or near the Korean DMZ during the April 1968—July 1969 time frame. 74 FR 36640. We note further that, at VA's request, the NAS is undertaking a comprehensive study of the potential herbicide exposure among veterans who served in the offshore waters around Vietnam and VA will carefully evaluate the findings of the NAS resulting from that study. Finally, we wish to make clear that the presumptions of service connection provided by this rule will apply to any veteran who was exposed during service to the herbicides used in Vietnam, even if exposure occurred outside of Vietnam. A veteran who is not presumed to have been exposed to herbicides, but who is shown by evidence to have been exposed, is eligible for the presumption of service connection for the diseases listed in § 3.309(e), including the three diseases added by this rule.

(2) Expanding the Presumptions To Include Other Herbicides

Other commenters, including USMVP, seek to persuade VA to presume service connection for veterans exposed to trichloroethylene (TCE) (a substance found in organic solvents) and malathion (an insecticide). USMVP concedes that TCE and malathion are differently formulated chemical compounds used for pest control and equipment maintenance, respectively. Nevertheless, USMVP contends that VA's mandate is sufficiently broad to allow the Secretary to presume diseases to be service connected upon exposure to TCE and Malathion.

VA Response: These comments are beyond the scope of this rulemaking. We proposed to revise 38 CFR 3.309(e) to implement the requirements of 38 U.S.C. 1116(b) and (c) directing the Secretary of Veterans Affairs to determine whether there is a positive association between exposure to the herbicides used in Vietnam and the occurrence of specific diseases. The comments concerning the health effects of other types of exposures are distinct from the scope and purpose of the proposed rule.

USMVP notes that section 6 of the Agent Orange Act of 1991 directed VA to compile data that is likely to be scientifically useful in determining the association, if any, between disabilities and exposure to toxic substances including, but not limited to, dioxin. This rulemaking, however, is based on the distinct provisions in section 2 of the Agent Orange Act, codified in pertinent part at 38 U.S.C. 1116, requiring VA to determine whether diseases are associated with an "herbicide agent," which is defined to refer to "a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975." 38 U.S.C. 1116(a)(3). Accordingly, VA's regulation

that implements 38 U.S.C. 1116(a)(3), 38 CFR 3.307(a)(6)(i), defines herbicide agents specifically: "2,4–D; 2,4,5–T and its contaminant TCDD; cacodylic acid; and picloram." Therefore, VA makes no changes based on these comments.

(3) Secondary Service Connection Explicitly Listed in Regulation

Some commenters suggest that the proposed regulation should include secondary conditions that result from disabilities presumptively service connected due to certain herbicide exposure. The commenters note that VA published a proposed rule establishing presumptive service connection for nine specific infectious diseases associated with military service in the Southwest Asia theater of operations and that the proposed rule listed secondary conditions potentially caused by those infectious diseases. 75 FR 13051–13058 (March 18, 2010). Furthermore, the commenters stated that when VA grants service connection for a primary disease, all secondary conditions proximately caused by that disease are also service connected. 38 CFR 3.310.

VA Response: VA's proposed rule to establish presumptive service connection for nine specific infectious diseases associated with military service in the Southwest Asia theater of operations was based, in part, on the report issued by the National Academy of Sciences (NAS) entitled "Gulf War and Health Volume 5: Infectious Diseases," which reported on the association between primary infectious disease and secondary health effects as a result of service in the Southwest Asia theater of operations. This report differed from previous NAS reports in that it implicated two tiers of possible association between a hazard and resulting health outcomes. In particular, NAS made comprehensive findings as to the conditions that may be secondarily caused by the primary infectious diseases, and VA determined that it would be helpful to include those findings in its rules. In contrast, the NAS reports on Agent Orange address only one tier of possible association between exposure to herbicides and the development of long-term health effects. In view of the divergent structure of the two studies and the absence of findings in Update 2008 regarding secondary health effects, VA did not propose to list secondary health effects in this rule. Although it may be feasible to identify and list known secondary effects of the three diseases covered in this rule, doing so is beyond the scope of this rule and, moreover, is not necessary to ensure that veterans are properly compensated for such secondary effects.

As the commenters correctly note, pursuant to 38 CFR 3.310, when VA grants service connection for a condition, all conditions proximately caused by that condition may also be service connected. This principle would apply to conditions where service connection is established by presumption or by other means, such as a direct link to incurrence during military service.

Consequently, VA makes no change based on these comments.

E. Negative Comment

Only one comment indicated clear opposition to the final rule. The commenter asserted that "[t]he proposed rule for presumptive conditions to Agent Orange exposure * * * is ridiculous. Just because gen[e]tic and life style illness are now affecting those of an age that served in Vietnam, does not mean that their service in Vietnam caused this." The commenter went on to ask "No medical expert links these diseases to Agent Orange exposure why should the VA?"

VA Response: First we note that the comment only pertains to the addition of ischemic heart disease to VA's presumptive list. It does not express any opposition to the addition of Parkinson's disease or B-cell Leukemias to VA's presumptive list.

VA's decision to add ischemic heart disease to the list of diseases that are presumptively service connected based upon exposure to herbicides used in Vietnam was issued after the Secretary considered the IOM's Update 2008, concerning the health effects in Vietnam Veterans of exposure to herbicides. That report states as follows:

> After consideration of the relative strengths and weaknesses of the evidence regarding the chemicals of interest and ischemic heart disease (ICD 410–414), which includes a number of studies that showed a strong dose-response relationship and that had good toxicologic data demonstrating biologic plausibility, the committee judged that the evidence was adequately informative to advance this health outcome from the "inadequate or insufficient" category into the "limited or suggestive" category, again acknowledging that bias and confounding could not be ruled out. (Page 631 of Update 2008) [1]

The IOM report's discussion demonstrates that there are medical studies that show a correlation between exposure to herbicides and ischemic heart disease. As we explained in the notice of proposed rulemaking, the IOM committee found that, of the nine most informative studies on this issue, five showed strong statistically significant associations between herbicide exposure and IHD. The IOM committee noted that the evidence for an association was further strengthened by findings of a dose-response relationship, meaning that the risk of IHD was found to be highest in populations with the highest levels of herbicide exposure. As stated in the notice of proposed rulemaking, the Secretary has determined that this evidence meets the standard in 38 U.S.C. 1116 for finding a "positive association" between herbicide exposure and IHD. The Secretary considers the analysis in the IOM report to provide sufficient scientific basis to conclude that ischemic heart disease merited inclusion on VA's list of presumptive diseases. It is important to note that 38 U.S.C. 1116 directs VA to establish a presumption if the credible evidence for an association between herbicide exposure and a disease is equal to or outweighs the credible evidence against the association. This evidentiary standard does not require the same level of proof that members of the scientific community might require before concluding that the disease is necessarily associated with herbicide exposure. The Secretary has determined that this decision is consistent with the standard of proof established by statute, and VA has no authority to change that statutory standard. Accordingly VA makes no changes based on this comment.

F. Comments Indicating General Support of the Rulemaking

In addition to the nearly 400 comments received from the Parkinson's community expressing support for the addition of Parkinson's disease to VA's presumptive list, VA received just over 100 additional comments that expressed support for the rulemaking in general. Many of these comments, which were received from individuals as well as public and private organizations, stated appreciation for VA's actions in adding one or more of the three diseases to its regulatory list of conditions that are presumptively service connected based upon herbicide exposure in Vietnam. VA appreciates the time and effort expended by these commenters in reviewing the proposed rule and in submitting comments, as well as their support for this rulemaking.

[1] Institute of Medicine of the National Academies, *Veterans and Agent Orange: Update 2008.* The National Academies Press (Washington DC, 2009); available online at *http://www.nap.edu/openbook.php?record_id=12662&page=515* (accessed May 25, 2010).

G. Additional Comments Outside the Scope of This Rulemaking

(1) Comments Related to VA's Cost Estimate and Assignment of Disability Ratings.

VA received 25 comments from organizations and members of the public concerning the assumptions stated in VA's budget estimates that: (1) The average disability rating for Parkinson's disease will be 100 percent; (2) the average disability rating for IHD will be 60 percent; and (3) the average disability rating for leukemia will be 100 percent. Many of these comments construed these cost estimates as an expression of VA policy concerning the assignment of particular disability thresholds for each of the new presumptive conditions. Some of the comments urged VA to assign 100 percent evaluations for each of the three diseases.

VA Response: The proposed rule contained cost estimate assumptions based on VA data which indicated that VA assumed the average disability evaluation for Parkinson's disease and leukemia to be 100 percent and for IHD to be 60 percent. VA would like to clarify that these assumptions are merely estimates and were made based on VA program experience. They are used for cost estimate purposes only, and they have no binding effect on any particular disability rating actually assigned. The fact that VA projects, for cost purposes, that particular disabilities will result in a particular average impairment, does not indicate the existence of a minimum level of disability compensation for any of the three new presumptive conditions. The disability rating assigned will be based on the individual factual situations and, in the case of Parkinson's disease and hairy cell leukemias, individual ratings may be less than 100 percent. Similarly, individual ratings for IHD may be greater, less, or equal to 60 percent. Indeed VA anticipates that some disabilities which are granted presumptive service connection will be assigned non-compensable ratings. This would occur, for example, if an individual was diagnosed with a disease, IHD for example, but manifested no current disabling symptoms.

The disability ratings to be assigned for any disease or injury are based upon application of VA's Schedule for Rating Disabilities in 38 CFR Part 4 to the facts of each case. VA did not propose in this rulemaking to revise any of the provisions in that schedule. As explained above, the assumptions stated for purposes of VA's cost estimate did not propose to adopt specific minimum ratings or to make any change to the rating schedule. To the extent these comments suggest adoption of minimum disability ratings they are outside the scope of this rulemaking. Accordingly, VA makes no changes based on these comments.

(2) Perceived Nehmer Contradiction

One commenter expressed concern that the statement in the preamble of the proposed rule at 75 FR at 14394 that retroactive benefit costs are paid in the first year only conflicts with the decision in the *Nehmer* case. The stated concern appears to be that paying retroactive benefits in the first year only may limit retroactive payments authorized by the *Nehmer* court orders.

VA Response: The commenter's reference pertains to the Preamble and cost estimate assumptions, which, as stated above, were used for cost estimating purposes only and will have no binding effect upon claims involving retroactive benefits under the proposed rule. Because this comment relates to a factual assumption in VA's cost analysis, which does not affect the scope of the final rule, the comment has no bearing on the final rule.

We want to make clear, however, that nothing in this rule would contravene or limit the *Nehmer* court orders. When retroactive benefits are paid as a result of a claim that qualifies under the *Nehmer* litigation, the award is paid from current year appropriations and that VA's cost estimates for this regulation include first year, five year, and ten year costs. The statement in VA's cost estimate that retroactive benefits are paid in the first year only is intended merely to reflect that VA expects to process all claims involving retroactive payments for the new presumptions under *Nehmer* within the first year after this rule is issued. Accordingly, VA makes no changes based on these comments.

(3) Statements About Personal Situations and Hypothetical Benefit Questions

Many commenters made general statements about their own personal difficulties battling one or more of the presumptive diseases. Another commenter inquired as to the possible implications of *Bradley* v. *Peake,* 22 Vet. App. 280 (2008). The commenters who inquired about *Bradley* asked whether, hypothetically, an IHD disability rating in addition to another disability that meet the statutory criteria under 38 U.S.C. 1114(s), could potentially establish eligibility for special monthly compensation.

VA Response: Comments regarding hypothetical situations involving the possible outcome of benefit claims or the medical or claims history presented by individual veterans are beyond the scope of this rulemaking. Claimants should contact their VA regional office for assistance with their individual claims.

(4) Comments Unrelated to the Subject of the Rulemaking

VA received approximately 40 comments dealing with issues not directly related to the addition of the three new presumptively service-connected diseases. Such comments covered a wide range of topics. Examples of such comments appear below.

One commenter opined that spouses of veterans should be compensated. One commenter stated that more should be done for caregivers of veterans. Another commenter suggested that VA should guide the military services on presumptives related to Agent Orange. Some commenters complained that the rulemaking process is too lengthy. Two commenters disapproved of the fact that herbicides were allowed to be used during conflict. Several commenters criticized the benefit claims system, including the VA's Schedule for Rating Disabilities. One commenter stated that 38 CFR 3.816 (*Nehmer* Awards) should be revised to list the three new presumptions. A commenter recommended that a working group be created to define needed research and studies on diseases and Vietnam veterans. One commenter questioned whether there is a relationship between PTSD or stress and cardiovascular disease. Another commenter wanted VA to give greater weight to finding of total disability by the Social Security Administration. A commenter requested special guidance for compensation and pension examinations to ensure comprehensive evaluation of cognitive and dementia issues related to Parkinson's disease; another commenter similarly requested an update in rating templates for Parkinson's disease. A commenter wanted VA to provide guidance to the Department of Defense concerning the new presumptive conditions. Another commenter indicated disagreement with the findings and conclusion included in Update 2008. Some commenters expressed dissatisfaction with the note in the current regulation regarding requirements for peripheral neuropathy.

VA Response: VA does not respond to these comments because they are either unrelated to this rulemaking or beyond its scope.

Paperwork Reduction Act

The collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) that is contained in this document is authorized under OMB Control No. 2900–0001.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this rulemaking and determined that it is an economically significant rule under this Executive Order, because it will have an annual effect on the economy of $100 million or more.

Regulatory Impact Analysis

VA followed OMB Circular A–4 to the extent feasible in this Regulatory Impact Analysis. The circular first calls for a discussion of the Statement of Need for the regulation. The Agent Orange Act of 1991, as codified at 38 U.S.C. 1116 requires the Secretary of Veterans Affairs to publish regulations establishing a presumption of service connection for those diseases determined to have a positive association with herbicide exposure in humans.

Statement of Need: On October 13th, 2009, the Secretary of Veterans Affairs, Eric K. Shinseki, announced his intent to establish presumptions of service connection for PD, IHD, and hairy cell/B cell leukemia for veterans who were exposed to herbicides used in the Republic of Vietnam during the Vietnam era.

Summary of the Legal Basis: This rulemaking is necessary because the Agent Orange Act of 1991 requires the Secretary to promulgate regulations establishing a presumption of service connection once he finds a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of any particular disease. This final rulemaking is required by statute and the result of the Secretary's discharge of his statutory mandate pursuant to the statute.

Alternatives: There are no feasible alternatives to this rulemaking, since the Agent Orange Act of 1991 requires the Secretary to initiate rulemaking once the Secretary finds a positive association between a disease and herbicide exposure in Vietnam during the Vietnam era. The rule implements statutorily required provisions to expand veteran benefits.

Risks: The rule implements statutorily required provisions to expand veteran benefits. No risk to the public exists.

Anticipated Costs and Benefits: In the proposed rule, we estimated the total cost for this rulemaking to be $13.6 billion during the first year (FY2010), $25.3 billion for 5 years, and $42.2 billion over 10 years. These amounts included benefits costs and government operating expenses for both Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA). A detailed cost analysis for each Administration is provided below.

The proposed rule indicated costs beginning in FY2010. At the time the proposed rule impact analysis was developed, VA anticipated the final rulemaking would be published more than 60 days before the end of FY2010, including allowing time for the 60 day requirement under the CRA, and therefore payments would commence in FY2010. VA now knows that the timing of the final rulemaking will not allow payments to begin prior to FY2011. As a result, VA expects FY2010 and FY2011 costs, as shown in some of the tables below from the proposed rule, will both now occur in FY2011. We have not recalculated the tables to reflect this change.

Veterans Benefits Administration (VBA) Costs

We estimated VBA's total cost to be $13.4 billion during the first year (FY2010), $24.3 billion for five years, and $39.7 billion over ten years.

Benefits costs ($000's)	1st year (FY10)	5-year	10-year
Retroactive benefits costs *	$12,286,048	** $12,286,048	** $12,286,048
Recurring costs from retroactive processing	0	4,388,773	10,300,132
Increased benefits costs for Veterans currently on the rolls	415,927	2,188,784	4,864,755
Accessions	675,214	4,645,609	11,330,294
Administrative Costs			
FTE costs	*** 4,554	797,473	894,614
New office space (minor construction)		12,835	12,835
IT equipment		30,232	32,805
Totals	13,381,743	24,349,746	39,721,476

* Retroactive benefits costs are paid in the first year only.
** Inserted for cumulative totals.
*** FTE costs in FY 2010 represented a level of effort of current FTE that would be used to work claims received in FY2010. New hiring would begin in 2011.

Of the total VBA benefits costs identified for FY 2010, $12.3 billion accounted for retroactive benefit payments. Ten-year total costs for ischemic heart disease is $31.9 billion, Parkinson's disease accounts for $3.5 billion, and hairy cell and B-cell leukemia is the remaining $3.4 billion.

TOTAL OBLIGATIONS BY PRESUMPTIVE CONDITION

($000's)	Retroactive payments	1st year	5-year	10-year
Ischemic heart disease	$9,877,787	$900,470	$9,307,716	$21,978,301
Parkinson's	692,20	166,300	1,189,143	2,796,852
Hairy cell/B-cell leukemia	1,716,057	24,372	726,306	1,720,028
Sub-total	12,286,048	1,091,142	11,223,165	26,495,181
Total	12,286,048	* 13,377,190	* 23,509,213	* 38,781,229

* Includes retroactive payments.

Methodology

The cost estimate for the three presumptive conditions considers retroactive benefit payments for veterans and survivors, increases for veterans currently on the compensation rolls, and potential accessions for veterans and survivors. There are numerous assumptions made for the purposes of this cost estimate. At a minimum, four of those could vary considerably and the result could be dramatic increases or decreases to the mandatory benefit numbers provided. The estimate assumes:

- A prevalence rate of 5.6% for IHD based upon information extracted from the CDC's Web site. Even slight variations to this number will result in significant changes.
- An 80% application rate in most instances. We have prior experiences that have been as low as in the 70% range and as high as in the 90% range.
- New enrollees will, on average, be determined to have about a 60% degree of disability for IHD. This would mirror the degree of disability for the current Vietnam Veteran population on VA's rolls. However, most of the individuals have had the benefit of VHA health care. We cannot be certain that the new population of Vietnam Veterans coming into the system will mirror that average.
- Only the benefit costs of the presumptive conditions listed. Secondary conditions, particularly to IHD, may manifest themselves and result in even higher degrees of disability ultimately being granted.

Retroactive Veteran and Survivor Payments

Vietnam Veterans Previously Denied

In 2010, approximately, 86,069 Vietnam beneficiaries (as of August 2009 provided by PA&I) are eligible to receive retroactive payments for the new presumptive conditions under the provisions of 38 CFR 3.816 (Nehmer). Of this total, 69,957 are living Vietnam Veterans, of which 62,206 were denied for IHD, 5,441 were denied for hairy cell or B cell leukemia, and the remaining 2,310 for Parkinson's disease. Of those previously denied service connection for the three new presumptive conditions, 52,918, or nearly 76 percent, are currently on the rolls for other service-connected disabilities.

Compensation and Pension (C&P) Service assumes the average degree of disability for both Parkinson's disease and hairy cell/B cell leukemia will be 100 percent, and IHD will be 60 percent. Based on the Combined Rating Table, we assume veterans currently not on the rolls would access at the percentages identified above. For those veterans currently on the rolls for other service-connected disabilities, we assume they would receive a retroactive award based on the higher combined disability rating. For example, a veteran who is on the rolls and rated 10 percent disabled who establishes presumptive service connection for Parkinson's disease will result in a higher combined rating of 100 percent and receive a retroactive award for the difference. For purposes of this cost estimate, we assumed that veterans previously denied service connection for one of the three new conditions who are currently receiving benefits were awarded benefits for another disability concurrently.

Based on the Nehmer case review in conjunction with the August 2006 Haas Court of Appeals for Veterans Claims (CAVC) decision, C&P Service identified an average retroactive payment of 11.38 years for veterans whose claims were previously denied. Obligations for retroactive payments for veterans not currently on the rolls were calculated by applying the caseload to the benefit payments by degree of disability, multiplied by the average number of years for veterans' claims. For those who are on the rolls, based on a distribution by degree of disability, obligations were calculated by applying the increased combined degree of disability for those currently rated zero to ninety percent. Of the total 52,918 currently on the rolls, 8,348 are currently rated 100 percent disabled and, therefore, would not likely receive a retroactive award payment.

Of the total 86,069 Vietnam beneficiaries, a total of 69,957 are living Vietnam Veterans. Of this total, 52,918 are currently on the rolls for other service-connected disabilities and 17,039 are off the compensation rolls (52,918 + 17,039 = 69,957). Of the 52,918 Vietnam Veterans who are on the rolls, 8,348 are currently rated 100 percent disabled and would not likely receive a retroactive payment (17,039–8,348 = 8,691 + 52,918 = 61,609).

VETERAN CASELOAD AND OBLIGATIONS FOR RETROACTIVE BENEFITS

Presumptive conditions	Caseload	Retroactive payments ($000's)
Ischemic Heart Disease	54,926	$7,837,369
Parkinson's Disease	2,042	568,920
Hairy Cell/B Cell Leukemia	4,641	1,209,586
Total	61,609	9,615,875

Vietnam Veteran Survivors Previously Denied

Survivor caseload was determined based on veteran terminations. Based on data obtained from PA&I, of the 86,069 previous denials, 16,112 of the Vietnam veterans are deceased. Of the deceased population, 13,420 were veterans previously denied claims for IHD, 2,165 were denied for hairy cell or B cell leukemia, and 527 were denied for Parkinson's disease. We assumed that 90 percent of the survivor caseload will be new to the rolls and the remaining ten percent are currently in receipt of survivor benefits.

The 2001 National Survey of Veterans found that approximately 75 percent of veterans are married. With the marriage rate applied, we estimate there are 12,084 survivors in 2010. Based on the Nehmer case review in conjunction with the August 2006 Haas Court of Appeals for Veterans Claims (CAVC) decision, C&P Service identified an average retroactive payment of 9.62 years for veterans' survivors. Under Nehmer, in addition to survivor dependency and indemnity compensation (DIC) benefits, survivors are also entitled to the veteran's retroactive benefit payment to the date of the veteran's death. Obligations for survivors who were denied claims were determined by applying the survivor caseload for each presumptive condition to the average survivor compensation benefit payment from the 2010 President's Budget and the average number of years for the survivor's claim (9.62 years). Veteran benefit payments to which survivors are entitled were calculated similarly with the exception of applying the survivor caseload for each presumptive condition to the difference between the average veteran claim of 11.38 years and the average survivor claim of 9.62 years. The estimated remaining 4,028 deceased veterans who were not married would have their retroactive benefit payment applied to their estate.

Of the 86,069 Vietnam beneficiaries, a total of 16,112 are Vietnam Veterans that are deceased. Of this total, an estimated 12,084 were married and an estimated 4,028 were not married (12,084 + 4,028 = 16,112).

SURVIVOR CASELOAD AND OBLIGATIONS FOR RETROACTIVE BENEFITS

Presumptive conditions	Caseload	Retroactive payments ($000's)
Ischemic Heart Disease	13,420	$2,040,418
Parkinson's Disease	527	123,284
Hairy Cell/B Cell Leukemia	2,165	506,470
Total	16,112	2,670,173

Recurring Veteran and Survivor Payments

Retroactive caseload obligations for both veterans and survivors become a recurring cost and are reflected in out-year estimates. Mortality rates are applied in the out years to determine caseload.

RECURRING VETERAN AND SURVIVOR CASELOAD AND OBLIGATIONS FROM RETROACTIVE PROCESSING

FY	Veteran caseload	Survivor caseload	Obligations ($000's)
2010	N/A	N/A	N/A
2011	61,365	10,672	$1,079,310
2012	61,243	10,570	1,084,209
2013	61,121	10,458	1,102,800
2014	61,000	10,336	1,122,454
2015	60,879	10,201	1,142,251
2016	60,758	10,052	1,162,167
2017	60,637	9,891	1,182,189
2018	60,517	9,716	1,202,298
2019	60,397	9,526	1,222,453
Total			10,300,132

Vietnam Veterans (Reopened Claims)

We expected veterans who are currently on the compensation rolls and have any of the three presumptive conditions to file a claim and receive a higher combined disability rating beginning in 2010. We anticipate that veterans receiving compensation for other service-connected conditions will continue to file claims over ten years. Total costs are expected to be $415.9 million the first year and approximately $4.9 billion over ten years.

According to the Defense Manpower Data Center (DMDC), there are 2.6 million in-country Vietnam Veterans. With mortality applied, an estimated 2.1 million will be alive in 2010. C&P Service assumes that 34 percent of this population are service connected for other conditions and are already in receipt of compensation benefits. In 2010, we anticipated that 725,547 Vietnam Veterans would be receiving compensation benefits. This number is further reduced by the number of veterans identified in the previous estimate for retroactive claims (52,918). C&P Service assumes an average age of 63 for all Vietnam Veterans. With prevalence and mortality rates applied, and an estimated 80 percent application rate and 100 percent grant rate, we calculate that 32,606 veterans currently on the rolls would have a presumptive condition in 2010. Of this total, we anticipated 27,909 cases would result in increased obligations. Of the 27,909 veterans, 25,859 are associated with IHD, 1,693 are associated with Parkinson's disease, and the remaining 357 are associated with hairy cell/B cell leukemia. In future years, the estimated

number of veteran reopened claims decreases to almost one thousand cases and continues at a decreasing rate. The cumulative effect of additional cases with mortality rates applied is shown in the chart below.

The Vietnam Era caseload distribution by degree of disability provided by C&P Service was used to further distribute the total Vietnam Veterans who will have a presumptive condition in 2010 by degree of disability for each of the three new presumptive conditions. We assume 100 percent for the average degree of disability for both Parkinson's disease and hairy cell/B cell leukemia and 60 percent for IHD. Based on the Combined Rating Table, veterans that are on the rolls for other service-connected conditions (with the exception of those that are currently receiving compensation benefits for 100 percent disability), would receive a higher combined disability rating if they have any of the three new presumptive conditions.

September average payments from the 2010 President's Budget were used to calculate obligations. These average payments are higher than schedular rates due to adjustments for dependents, Special Monthly Compensation, and Individual Unemployability. The difference in average payments due to higher ratings was calculated, annualized, and applied to the on-rolls caseload to determine increased obligations. Because this particular veteran population is currently in receipt of compensation benefits, survivor caseload and obligations would not be impacted.

REOPENED CASELOAD AND OBLIGATIONS

FY	Veteran caseload	Obligations ($000's)
2010	27,909	$415,927
2011	28,340	418,928
2012	29,051	431,726
2013	29,746	451,042
2014	30,425	471,161
2015	31,086	491,648
2016	31,746	512,767
2017	32,404	534,529
2018	33,061	556,958
2019	33,716	580,070
Total		4,864,755

Vietnam Veteran and Survivor Accessions

We anticipated accessions for both veterans and survivors beginning in 2010 and continuing over ten years. Total costs were expected to be $675.2 million in the first year and total just over $11.3 billion from the cumulative effect of cases accessing the rolls each year.

To identify the number of veteran accessions in 2010, we applied prevalence rates to the anticipated living Vietnam Veteran population of 2,133,962, and reduced the population by those identified in the previous estimates for retroactive and reopened claims. Based on an expected application rate of 80 percent and a 100 percent grant rate, 28,934 accessions are expected. Of the 28,934 veteran accessions, 25,505 are associated with IHD, 3,074 are associated with Parkinson's disease, and the remaining 355 are associated with hairy cell/B cell leukemia. In the out years, anticipated veteran accessions drop to approximately 3,400 cases in 2011, and continue at a decreasing rate. The cumulative effect of additional cases coupled with applying mortality rates is shown in the chart below.

To calculate obligations, the caseload was multiplied by the annualized average payment. We assumed those accessing the rolls due to IHD will be rated 60 percent disabled and those with either Parkinson's disease or hairy cell/B cell leukemia will be rated 100 percent disabled. Average payments were based on the 2010 President's Budget with the Cost of Living Adjustments factored into the out years.

The caseload for survivor compensation is associated with the number of service-connected veterans' deaths. There are two groups to consider for survivor accessions: Those survivors associated with veterans who never filed a claim and died prior to 2010; and survivors associated with the mortality rate applied to the veteran accessions noted above.

To calculate the survivor caseload associated with veterans who never filed a claim and died prior to 2010, general mortality rates were applied to the estimated total Vietnam Veteran population (2.6 million). We estimate that almost 500,000 Vietnam Veterans were deceased by 2010. Prevalence rates for each condition were applied to the total veteran deaths to estimate the number of deaths due to each condition. With the marriage rate and survivor mortality applied, we anticipated 20,961 eligible spouses at the end of 2010. We assumed that half of this population would apply in 2010 and the remaining in 2011. Obligations were calculated by applying average survivor compensation payments to the caseload each year.

The second group of survivors associated with veteran accessions was calculated by applying mortality rates for each of the presumptive conditions to the estimated eligible veteran population (28,934). In 2010, 57 veteran deaths were anticipated as a result of one of the new presumptive conditions. With the marriage rate applied and aging the spouse population (and assuming spouses were the same age as veterans), we calculated 42 spouses at the end of 2010. Average survivor compensation payments were applied to the spouse caseload to determine total obligations.

VETERAN AND SURVIVOR ACCESSIONS CUMULATIVE CASELOAD AND TOTAL OBLIGATIONS

FY	Veteran caseload	Survivor caseload	Total obligations
2010	28,934	10,416	$675,214
2011	32,270	20,265	882,974
2012	35,541	20,693	955,525
2013	38,744	20,487	1,028,467
2014	41,874	20,283	1,103,429
2015	44,928	20,081	1,179,725
2016	47,900	19,881	1,257,259
2017	50,787	19,682	1,335,922
2018	53,583	19,485	1,415,601
2019	56,285	19,290	1,496,178
Total			11,330,294

Estimated Claims From Veterans Not Eligible

Based on program history, we anticipate that we will also receive claims from veterans who will not be eligible for presumptive service connection for the three new conditions.

These claims will be received from two primary populations:

• Veterans with a presumptive disease who did not serve in the Republic of Vietnam.

• Claims from Vietnam Veterans with hypertension who claim "heart disease."

We applied the prevalence rate of IHD, Parkinson's disease and hairy cell/B cell leukemia to the estimated population of veterans who served in Southeast Asia during the Vietnam Era (45,304, 32, and 6 respectively), and assumed that 10 percent of that population will apply for presumptive service connection.

Review of data obtained from PA&I shows that 23 percent of Vietnam Veterans who have been denied entitlement to service connection for hypertension also have nonservice-connected heart disease. We applied the prevalence rate of hypertension to the living Vietnam Veteran population, and then subtracted 23 percent who are assumed to also have IHD. We assumed that 10 percent of the remaining population would apply for presumptive service connection to arrive at an estimated caseload of 111,256.

We then assumed that 25 percent of the ineligible population would apply in 2010, 25 percent would apply in 2011, and the remaining population would apply over the next 8 years. For purposes of claims processing, anticipated claims are as follows. The chart below reflects workload, which is not directly comparable to the preceding caseload charts.

TOTAL CLAIMS

FY	Retroactive claims	Reopened claims	Accessions	Claims not eligible	Total claims
2010	86,069	32,606	39,350	27,814	185,839
2011		1,069	13,806	27,814	42,689
2012		1,051	3,386	6,954	11,391
2013		1,032	3,329	6,954	11,314
2014		1,011	3,267	6,954	11,232
2015		989	3,201	6,954	11,143
2016		989	3,129	6,953	11,071
2017		989	3,053	6,953	10,995
2018		989	2,971	6,953	10,913
2019		989	2,885	6,953	10,827

VBA Administrative Costs

Administrative costs, including minor construction and information technology support were estimated to be $4.6 million during FY2010, $841 million for five years and $940 million over ten years.

C&P Service, along with the Office of Field Operations, estimated the FTE that would be required to process the anticipated claims resulting from the new presumptive conditions using the following assumptions:

1. 185,839 additional claims in addition to the projected 1,146,508 receipts during FY2010. This includes:

• 86,069 retroactive readjudications under Nehmer.

• 89,354 new and reopened claims from veterans.

• 10,416 new claims from survivors.

2. The average number of days to complete all claims in FY2010 would be 165.

3. Priority will be given to those Agent Orange claims that fall in the Nehmer class action.

In FY2010, we intended to leverage the existing C&P workforce to process as many of these new claims as possible, once the regulation was approved, but especially the Nehmer cases. However, to fully accommodate this additional claims volume with as little negative impact as possible on the processing of other claims, we plan to add 1,772 claims processors to be brought on in the FY2011 budget and timeframe. This approximate level of effort will be sustained through 2012 and into 2013 in order to process these claims without significantly degrading the processing of the non-presumptive workload.

• Net administrative costs for payroll, training, additional office space, supplies and equipment were estimated to be $4.6 million in FY2010, $165 million in FY2011, $798 million over five years, and $895 million over 10 years. Additional support costs for minor construction are expected to be $12.8 million over the five and ten year period. Information Technology (computers and support) are assumed to

require $30.2 million over five years and $32.8 million over ten years.

Veterans Health Administration (VHA) Costs

We estimated VHA's total cost to be $236 million during the first year (FY2010), $976 million for five years, and $2.5 billion over ten years.

FY2010 and FY2011 Summary

- FY2010 new enrollee patients are expected to number 8,680.
- FY2011 additional new enrollees are expected to number 1,018.
- FY2010 costs for C&P examinations are expected to be $114M.
- FY2011 costs for C&P examinations are expected to be $23M.
- FY2010 health care costs (inclusive of travel) are expected to be $236M (using cost per patient of 13,500).
- FY2011 health care costs (inclusive of travel) are expected to be $165M (using cost per patient of 14,100).
- Combined costs are as follows:
  - FY2010: $236M.
  - FY2011: $165M.

Assumptions

- 30% of veterans newly determined to be service-connected will enroll and will use VA health care.
- Newly enrolled veterans will be Priority Group 1 veterans.
- The cost per patient is arrived at using the average cost per Priority Group 1 patient aged between 45–64.
- Every VBA case will require a new exam.
- It is assumed that 100% of newly enrolled veterans will request mileage reimbursement. The average amount of mileage reimbursement claims per veteran is $511 (this amount reflects to the FY2009 actual average amount).

We note that many assumptions, which form the foundation for an agency's cost forecasts, seldom prove to be completely accurate due to variables over which VA has no control, such as application rates, veteran Priority Group designation, diagnostic examinations in the future, or changes in incidence rates. For example, we assumed that all newly enrolled veterans would be in Priority Group 1. If we were to assume that a substantial number of these new enrollees would be in Priority Group 2, the cost estimate could decrease significantly.

Distribution of Disability Claims

VBA has established estimates for claims workload for veterans. Figure 1 provides breakdown of disability claims.

Overall, VBA anticipates 69,957 claims. Of these, 17,039 will be for veterans whose previous claims for disability compensation were denied. Additionally, VBA anticipates reopened claim volume of 32,606 claims in FY2010 with subsequent decreases to 1,069 per year in FY2011. VBA anticipates 28,934 accessions in FY2010. These are new disability compensation awards—for veterans who did not previously have an award for service connected disability compensation. Additionally, in FY2010 VBA anticipates disability claim volume associated with the presumptive SC determination to be 159,311 and to exceed 270,000 through FY2019.

FIGURE 1

FY	Retroactive claims	Retroactive claims representing new SC disability award	Reopened claims	Accessions	Total disability claim volume
2010	69,957	17,039	32,606	28,934	159,311
2011			1,069	3,393	31,207
2012			1,051	3,335	10,289
2013			1,032	3,273	10,227
2014			1,011	3,207	10,161
Subtotals			36,769	42,142	221,195
2015			989	3,137	10,091
2016			989	3,062	10,016
2017			989	2,983	9,937
2018			989	2,898	9,852
2019			989	2,809	9,763
Totals	69,957		41,714	57,031	270,854

New Enrollments and Changed Enrollments

The disability compensation workload, the resulting increases in service-connected patients, and the increased combined service connected percents will both add new patients to VA's health care system and will change the priority levels of veterans currently enrolled in VA's health care system.

For purposes of estimation, it is assumed that 30% of veterans "Accessions" will enroll in the system each year. For FY2010, this means that 8,680 of the 28,934 veteran "Accessions". Figure 2 provides the estimate of new enrollments per year for the ten year period. In all, it is estimated that 17,109 new veterans will enroll in VA's health care system.

FIGURE 2

FY	New enrollees per year	New enrollees cumulative
2010	8,680	8,680
2011	1,018	9,698
2012	1,001	10,699
2013	982	11,681

FIGURE 2—Continued

FY	New enrollees per year	New enrollees cumulative
2014	962	12,643
Subtotals	12,643	
2015	941	13,584
2016	919	14,502
2017	895	15,397
2018	869	16,267
2019	843	17,109
Totals	17,109	17,109

It is assumed that veterans enrolling will be Priority Group 1 veterans and that they will use VA health care services.

For purposes of estimation, it is assumed that 40% of the veterans whose claims are reopened will have been enrolled in VA's health care system and that their Priority Group will move from a copayment required status to a copayment exempt status. Additionally, it is assumed that their third party collections will be lost. It is assumed that 10% of the accessions will result in changes to veterans who are currently enrolled. These veterans would be enrolled in a copayment required status and would move to copayment exempt status. In FY2010 it is estimated that 43,919 veterans would have their enrollment status changed, and FY 2011 it is estimated that an additional 767 veterans would have their enrollment status changed. Figure 3 provides these estimated changes in enrollment status per year and cumulatively.

FIGURE 3

FY	Upgraded enrollees per year	Upgraded enrollees cumulative
2010	43,919	43,919
2011	767	44,686
2012	754	45,439
2013	740	46,180
2014	725	46,905
Subtotals	46,905	46,905
2015	709	47,614
2016	702	48,316
2017	694	49,010
2018	685	49,695
2019	677	50,372
Totals	50,372	50,372

Disability Exams Associated Costs

It is assumed that each VBA case will result in disability examinations for the veteran. In all, it is estimated that 270,854 disability examinations will need to be performed. An escalation factor of 4% is applied to cost of disability examinations.

FIGURE 4

FY	Total disability claim volume	Cost per disability exam *	Annual cost per disability exams
2010	159,311	$719	$114,544,609
2011	31,207	748	23,335,346
2012	10,289	778	8,001,451
2013	10,227	809	8,271,365
2014	10,161	841	8,546,705
Subtotals	221,195		162,699,475
2015	10,091	875	8,827,339
2016	10,016	910	9,112,200
2017	9,937	946	9,401,942
2018	9,852	984	9,694,379
2019	9,763	1,023	9,991,075
Totals	270,854		209,726,410

* *Source:* Allocation Resource Center.

Health Care and Total Costs

Figure 5 provides extended health care costs per year and includes costs for C&P disability examinations and travel associated with C&P examinations. The cost per patient is arrived at using the average cost per Priority Group 1 patient, ages 45–64. It is assumed that 100% of newly enrolled veterans will request mileage reimbursement. The average amount of mileage reimbursement claims per veteran is $511 (this amount reflects to the FY2009 actual average amount). Total costs over the 10-year period are estimated to be in excess of $2.4B.

FIGURE 5

FY	Annual cost per disability exams	Cost per BT mileage claim	Beneficiary travel costs (41.5 cents/mile)	Cost per patient	Health care costs per patient	Extended annual costs
2010	$114,544,609	$511	$4,435,582	$13,500	$117,182,700	$236,162,891
2011	23,335,346	511	4,955,729	14,100	136,743,210	165,034,285
2012	8,001,451	511	5,466,985	14,700	157,269,420	170,737,855
2013	8,271,365	511	5,968,736	15,100	176,375,550	190,615,650
2014	8,546,705	511	6,460,369	15,700	198,488,820	213,495,893
Subtotals	162,699,475		27,287,400		786,059,700	976,046,575
2015	8,827,339	511	6,941,271	16,300	221,414,310	237,182,919
2016	9,112,200	511	7,410,675	17,100	247,989,330	264,512,205
2017	9,401,942	511	7,867,969	17,900	275,609,880	292,879,791
2018	9,694,379	511	8,312,233	18,800	305,812,080	323,818,692
2019	9,991,075	511	8,742,852	19,800	338,764,140	357,498,068
Totals	209,726,410		66,562,400		2,175,649,440	2,451,938,251

Summary

Combined estimated increases in health care costs are presented in Figure 6.

FIGURE 6

FY	Extended annual costs
2010	$236,162,891
2011	165,034,285
2012	170,737,855
2013	190,615,650
2014	213,495,893
Subtotals	976,046,575
2015	237,182,919
2016	264,512,205
2017	292,879,791
2018	323,818,692
2019	357,498,068
Totals	2,451,938,251

Uncertainties: After the comment period had expired, VA received correspondence from the Chairman of the Senate Committee on Veterans Affairs which questioned VA's use of the prevalence rate of 5.6 percent for IHD in the proposed rule. The Chairman mentioned that the 5.6 percent prevalence rate was for the general U.S. population, instead of a rate more representative of the Vietnam Veteran population, which is older. He also asked why the prevalence rate for IHD among Vietnam Veterans was not assumed to increase on a yearly basis as they age over the next ten years, citing Centers for Disease Control (CDC) findings that the prevalence rate for IHD increases as an individual ages.

For purposes of costing the three new presumptive conditions in the proposed rule, VA's assumptions for the prevalence and mortality rates were identified based on information obtained from the CDC, the National Institutes of Health (NIH), and the Census Bureau. In FY2000, 15,800,000 people were identified with coronary heart disease. The total U.S. population according to the Census Population Survey in the same year was 281,421,906, reflecting the 5.6 percent prevalence rate. Since veteran-specific prevalence and mortality rates are not commonly reported, it is standard practice to use general population prevalence and mortality rates for cost estimating purposes.

After publishing a proposed rule, agencies often receive additional information, which in turn improves the analysis of agency action. It is not unusual for an agency to receive new data during or after the comment period, either submitted by the public with comments or collected by the agency in a continuing effort to give the agency's regulations a more complete foundation. An agency may use such data to address potential deficiencies in the proposed rule's data, so long as no prejudice is shown.

We have, therefore, conducted a separate analysis based on the CDC's age-adjusted prevalence rates for coronary heart disease. We found that CDC's data uses the age categories of 45–54, 55–64, 65–74, 75–84, and 85 and older, for both males and females. These age-adjusted prevalence rates were applied in a separate analysis, which resulted in much higher potential costs.

Using age-adjusted prevalence rates, shifting initial costs data from FY2010 to FY2011, adjusting the assumed degree of disability, and updating the assumed caseload, the estimated VBA costs in the first year would decrease by nearly $1.5 billion compared to VA's proposed rule estimate and the overall ten-year costs would increase by nearly $19.8 billion. Similarly, VHA developed a methodology based on the data provided by VBA to evaluate VBA projected claims data from a health care cost analysis perspective. Making adjustments for priority group distributions and shifting the FY2010 cost data to FY2011, the associated VHA costs in the first year would increase by nearly $100 million compared to VA's proposed rule estimate and the overall ten-year costs would increase by nearly $5.0 billion. The details of this analysis are available on VA's Web site at: *http://vaww1.va.gov/ORPM/FY_2010_Published_VA_Regulations.asp,* and also may be viewed online through the Federal Docket Management System at *http://www.regulations.gov.*

We note that many assumptions, which form the foundation for an agency's cost forecasts, seldom prove to be completely accurate due to variables over which VA has no control, such as application rates, better diagnostic techniques in the future, or changes in incidence rates. As documented in the Department's analysis, there are various

assumptions applied in the cost estimate that, if altered, could result in dramatic increases (*e.g.* age adjustment of prevalence rates) or decreases (*e.g.,* lower application rates) in the range of costs attributed to the rule. We further note that, in addition to being subject to various sources of uncertainty, the model applied by the Department for estimating the range of prospective impacts is further subject to the relative sensitivity of variation in the respective inputs to the model; for example, the model is highly sensitive to variation in the prevalence rates, such as that resulting from age adjustment.

While all three presumptive conditions covered by this rule are subject to these variations and the resulting impacts on projected obligations, VA considers the proposed rule's cost estimate to remain a reasonable baseline projection of the costs associated with this final rule. However, cost estimates provided and the assumptions used to develop them have no binding effect, and veterans who qualify for benefits on the basis of these presumptions will receive their benefits regardless of cost estimates used at this time. VA's discretionary and mandatory funding require explicit appropriations on an annual basis. Mandatory out-year estimates are evaluated for relevant current data as they become available and budget estimates are adjusted accordingly.

Unfunded Mandates

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

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 7, 2010, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: August 25, 2010.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA is amending 38 CFR part 3 as follows:

PART 3—ADJUDICATION

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

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

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

■ 2. Section 3.309 is amended as follows:

■ a. In paragraph (e), by removing "Chronic lymphocytic leukemia" and adding, in its place, "All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic leukemia)."

■ b. In paragraph (e), by adding "Parkinson's disease" immediately preceding "Acute and subacute peripheral neuropathy".

■ c. In paragraph (e), by adding "Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction; atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable and Prinzmetal's angina)" immediately following "Hodgkin's disease".

■ d. At the end of § 3.309, immediately following Note 2, adding a new Note 3 to reads as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

Note 3: For purposes of this section, the term ischemic heart disease does not include hypertension or peripheral manifestations of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of Ischemic heart disease.

[FR Doc. 2010–21556 Filed 8–30–10; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–19, et al.]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the postal product lists. This action reflects the disposition of recent dockets, as reflected in Commission orders, and a publication policy adopted in a recent Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which are re-published in their entirety, include these updates.

DATES: *Effective Date:* August 31, 2010.

Applicability Dates: July 13, 2010 (Stamp Fulfillment Services); July 29, 2010 (GEPS 3); July 30, 2010 (Global Plus 1A and Global Plus 2A); and August 6, 2010 (Priority Mail Contract 25, Priority Mail Contract 26, and Priority Mail Contract 27).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION: This document identifies recent updates to the product lists, which appear as 39 CFR Appendix A to Subpart A of Part 3020–Mail Classification Schedule.[1] Publication of updated product lists in the **Federal Register** is consistent with

[1] Docket Nos. MC2009-19; MC2010-28 and CP2010-71; MC2010-26, CP2010-67 and CP2010-68; MC2010-27, CP2010-69 and CP2010-70; MC2010-30 and CP2010-75; MC2010-31 and CP2010-76; and MC2010-32 and CP2010-77.

the Postal Accountability and Enhancement Act (PAEA) of 2006.

Authorization. The Commission process for periodic publication of updates was established in Order No. 445, April 22, 2010.

Changes. Since publication of the product lists in the **Federal Register** on July 28, 2010 (75 FR 44138), the following additions to the competitive product list have been made:

1. Stamp Fulfillment Services (MC2009–19), added July 13, 2010 (Order No. 487);

2. Global Expedited Package Services 3 (MC2010–28 and CP2010–71), added July 29, 2010 (Order No. 503);

3. Global Plus 1A (MC2010–26, CP2010–67 and CP2010–68), and Global Plus 2A (MC2010–27, CP2010–69 and CP2010–70), added July 30, 2010 (Order No. 504); and

4. Priority Mail Contract 25 (MC2010–30 and CP2010–75), Priority Mail Contract 26 (MC2010–31 and CP2010–76), and Priority Mail Contract 27 (MC2010–32 and CP2010–77), added August 6, 2010 (Order Nos. 508, 509 and 510).

Updated product lists. The referenced changes to the product lists are included in the product lists following the Secretary's signature.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020–Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020–Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List
- First-Class Mail
  - Single-Piece Letters/Postcards
  - Bulk Letters/Postcards
  - Flats
  - Parcels
  - Outbound Single-Piece First-Class Mail International
  - Inbound Single-Piece First-Class Mail International
- Standard Mail (Regular and Nonprofit)
  - High Density and Saturation Letters
  - High Density and Saturation Flats/Parcels
  - Carrier Route
  - Letters
  - Flats
  - Not Flat-Machinables (NFMs)/Parcels
- Periodicals
  - Within County Periodicals
  - Outside County Periodicals
- Package Services
  - Single-Piece Parcel Post
  - Inbound Surface Parcel Post (at UPU rates)
  - Bound Printed Matter Flats
  - Bound Printed Matter Parcels
  - Media Mail/Library Mail
- Special Services
  - Ancillary Services
  - International Ancillary Services
  - Address Management Services
  - Caller Service
  - Change-of-Address Credit Card Authentication
  - Confirm
  - Customized Postage
  - International Reply Coupon Service
  - International Business Reply Mail Service
  - Money Orders
  - Post Office Box Service
    - Stamp Fulfillment Services
- Negotiated Service Agreements
  - HSBC North America Holdings Inc. Negotiated Service Agreement
  - Bookspan Negotiated Service Agreement
  - Bank of America Corporation Negotiated Service Agreement
  - The Bradford Group Negotiated Service Agreement
  - Inbound International
    - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2010-12 and R2010-2)

Market Dominant Product Descriptions
- First-Class Mail
  - Single-Piece Letters/Postcards
  - Bulk Letters/Postcards
  - Flats
  - Parcels
  - Outbound Single-Piece First-Class Mail International
  - Inbound Single-Piece First-Class Mail International
- Standard Mail (Regular and Nonprofit)
  - High Density and Saturation Letters
  - High Density and Saturation Flats/Parcels
  - Carrier Route
  - Letters
  - Flats
  - Not Flat-Machinables (NFMs)/Parcels
- Periodicals
  - Within County Periodicals
  - Outside County Periodicals
- Package Services
  - Single-Piece Parcel Post
  - Inbound Surface Parcel Post (at UPU rates)
  - Bound Printed Matter Flats
  - Bound Printed Matter Parcels
  - Media Mail/Library Mail
- Special Services
  - Ancillary Services
  - Address Correction Service
  - Applications and Mailing Permits
  - Business Reply Mail
  - Bulk Parcel Return Service
  - Certified Mail
  - Certificate of Mailing
  - Collect on Delivery
  - Delivery Confirmation
  - Insurance
  - Merchandise Return Service
  - Parcel Airlift (PAL)
  - Registered Mail
  - Return Receipt
  - Return Receipt for Merchandise
  - Restricted Delivery
  - Shipper-Paid Forward
  - Signature Confirmation
  - Special Handling
  - Stamped Envelopes
  - Stamped Cards
  - Premium Stamped Stationery
  - Premium Stamped Cards
  - International Ancillary Services
  - International Certificate of Mailing
  - International Registered Mail
  - International Return Receipt
  - International Restricted Delivery
  - Address List Services
  - Caller Service
  - Change-of-Address Credit Card Authentication
  - Confirm
  - International Reply Coupon Service
  - International Business Reply Mail Service
  - Money Orders
  - Post Office Box Service
- Negotiated Service Agreements
  - HSBC North America Holdings Inc. Negotiated Service Agreement
  - Bookspan Negotiated Service Agreement
  - Bank of America Corporation Negotiated Service Agreement
  - The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List
- Express Mail
  - Express Mail
  - Outbound International Expedited Services
  - Inbound International Expedited Services
    - Inbound International Expedited Services 1 (CP2008–7)
    - Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
    - Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)
- Priority Mail
  - Priority Mail
  - Outbound Priority Mail International
  - Inbound Air Parcel Post (at non-UPU rates)
    - Royal Mail Group Inbound Air Parcel Post Agreement
  - Inbound Air Parcel Post (at UPU rates)
- Parcel Select
- Parcel Return Service
- International
  - International Priority Airlift (IPA)
  - International Surface Airlift (ISAL)

- International Direct Sacks—M—Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2010–14 and CP2010–13—Inbound Surface Parcel post at Non-UPU Rates and Xpresspost-USA)
- International Money Transfer Service—Outbound
- International Money Transfer Service—Inbound
- International Ancillary Services

Special Services
- Address Enhancement Service
- Greeting Cards and Stationery
- Premium Forwarding Service
- Shipping and Mailing Services

Negotiated Service Agreements
- Domestic
  - Express Mail Contract 1 (MC2008–5)
  - Express Mail Contract 2 (MC2009–3 and CP2009–4)
  - Express Mail Contract 3 (MC2009–15 and CP2009–21)
  - Express Mail Contract 4 (MC2009–34 and CP2009–45)
  - Express Mail Contract 5 (MC2010–5 and CP2010–5)
  - Express Mail Contract 6 (MC2010–6 and CP2010–6)
  - Express Mail Contract 7 (MC2010–7 and CP2010–7)
  - Express Mail Contract 8 (MC2010–16 and CP2010–16)
  - Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
  - Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
  - Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
  - Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
  - Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
  - Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
  - Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
  - Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
  - Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
  - Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
  - Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
  - Priority Mail Contract 1 (MC2008–8 and CP2008–26)
  - Priority Mail Contract 2 (MC2009–2 and CP2009–3)
  - Priority Mail Contract 3 (MC2009–4 and CP2009–5)
  - Priority Mail Contract 4 (MC2009–5 and CP2009–6)
  - Priority Mail Contract 5 (MC2009–21 and CP2009–26)
  - Priority Mail Contract 6 (MC2009–25 and CP2009–30)
  - Priority Mail Contract 7 (MC2009–25 and CP2009–31)
  - Priority Mail Contract 8 (MC2009–25 and CP2009–32)
  - Priority Mail Contract 9 (MC2009–25 and CP2009–33)
  - Priority Mail Contract 10 (MC2009–25 and CP2009–34)
  - Priority Mail Contract 11 (MC2009–27 and CP2009–37)
  - Priority Mail Contract 12 (MC2009–28 and CP2009–38)
  - Priority Mail Contract 13 (MC2009–29 and CP2009–39)
  - Priority Mail Contract 14 (MC2009–30 and CP2009–40)
  - Priority Mail Contract 15 (MC2009–35 and CP2009–54)
  - Priority Mail Contract 16 (MC2009–36 and CP2009–55)
  - Priority Mail Contract 17 (MC2009–37 and CP2009–56)
  - Priority Mail Contract 18 (MC2009–42 and CP2009–63)
  - Priority Mail Contract 19 (MC2010–1 and CP2010–1)
  - Priority Mail Contract 20 (MC2010–2 and CP2010–2)
  - Priority Mail Contract 21 (MC2010–3 and CP2010–3)
  - Priority Mail Contract 22 (MC2010–4 and CP2010–4)
  - Priority Mail Contract 23 (MC2010–9 and CP2010–9)
  - Priority Mail Contract 24 (MC2010–15 and CP2010–15)
  - Priority Mail Contract 25 (MC2010–30 and CP2010–75)
  - Priority Mail Contract 26 (MC2010–31 and CP2010–76)
  - Priority Mail Contract 27 (MC2010–32 and CP2010–77)
- Outbound International
  - Direct Entry Parcels Contracts
    - Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
  - Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
  - Global Direct Contracts 1 (MC2010–17 and CP2010–18)
  - Global Expedited Package Services (GEPS) Contracts
    - GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
    - Global Expedited Package Services 2 (CP2009–50)
    - Global Expedited Package Services 3 (MC2010–28 and CP2010–71)
  - Global Plus Contracts
    - Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
    - Global Plus 1A (MC2010–26, CP2010–67 and CP2010–68)
    - Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
    - Global Plus 2A (MC2010–27, CP2010–69 and CP2010–70)
  - Global Reseller Expedited Package Services 1 (MC2010-21 and CP2010-36)
- Inbound International
  - Inbound Direct Entry Contracts with Foreign Postal Administrations
    - Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
    - Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
  - International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
  - International Business Reply Service Competitive Contract 2 (MC2010–18, CP2010–21 and CP2010–22)
- Competitive Product Descriptions
  - Express Mail
  - Express Mail
  - Outbound International Expedited Services
  - Inbound International Expedited Services
  - Priority
  - Priority Mail
  - Outbound Priority Mail International
  - Inbound Air Parcel Post
  - Parcel Select
  - Parcel Return Service
  - International
  - International Priority Airlift (IPA)
  - International Surface Airlift (ISAL)
  - International Direct Sacks—M–Bags
  - Global Customized Shipping Services
  - International Money Transfer Service
  - Inbound Surface Parcel Post (at non-UPU rates)
  - International Ancillary Services
  - International Certificate of Mailing
  - International Registered Mail
  - International Return Receipt
  - International Restricted Delivery
  - International Insurance
  - Negotiated Service Agreements
  - Domestic
  - Outbound International
- Part C—Glossary of Terms and Conditions [Reserved]
- Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2010–21694 Filed 8–30–10; 8:45 am]

BILLING CODE 7710–FW–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–0380; A–1–FRL–9195–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Determination of Attainment of the 1997 Ozone Standard for the Greater Connecticut Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is determining that the Greater Connecticut moderate 1997 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon complete, quality-assured, certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 monitoring period. Under the provisions of EPA's ozone implementation rule, the requirements for this area to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans related to attainment of the 1997 8-hour ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS. In addition, EPA is determining that this area has attained the 1997 ozone NAAQS as of June 15, 2010, its applicable attainment date.

DATES: *Effective Date:* This rule is effective on September 30, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2010–0380. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What actions is EPA taking?
II. What is the effect of these actions?
III. Final Action
IV. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is determining that the Greater Connecticut area moderate 8-hour ozone nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured and certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2007–2009 monitoring period. In addition, preliminary data through June 15, 2010 continues to show this area meets the 1997 ozone NAAQS. EPA is also determining, under section 181(b)(2)(A) of the Clean Air Act (CAA), that this area has attained the 1997 ozone NAAQS by its applicable attainment date (June 15, 2010).

Other specific details related to the determination and the rationale for EPA's action are explained in the Notice of Proposed Rulemaking (NPR) published on June 1, 2010 (75 FR 30310) and will not be restated here. No comments were received on the NPR.

II. What is the effect of these actions?

Under the provisions of EPA's ozone implementation rule (*see* 40 CFR Section 51.918), the determination that the area is attaining the standard suspends the requirements for the Greater Connecticut moderate ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 ozone NAAQS. As we stated in EPA's proposed rulemaking, the Connecticut Department of Environmental Protection previously submitted an ozone attainment demonstration, Reasonable Further Progress plan, and contingency measures SIP, but EPA has not acted on these SIPs.

This action does not constitute a redesignation to attainment under CAA section 107(d)(3), because the area does not have an approved maintenance plan as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area remains moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment. If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

In addition, in accordance with CAA section 181(b)(2)(A), EPA is determining that the Greater Connecticut 1997 8-hour ozone nonattainment area has attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. Preliminary monitoring data that became available subsequent to EPA's proposal are consistent with continued attainment as of June 15, 2010. The effect of this determination of attainment by the area's attainment date is to discharge EPA's obligation under section 181(b)(2)(A), and to establish that, in accordance with that section, the area will not be reclassified for failure to attain by its applicable attainment date.

III. Final Action

EPA is determining that the Greater Connecticut 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard based on three years of complete, quality-assured and certified ozone monitoring data from 2007–2009. Preliminary data available through June 15, 2010 are consistent with continued attainment. As provided in 40 CFR 51.918, this determination suspends the requirements for Connecticut to submit an attainment demonstration, a reasonable further progress plan, contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 1997 8-hour ozone NAAQS for this area, for so long as the area continues to attain the 1997

ozone standard. In addition, pursuant to CAA section 181(b)(2)(A) EPA is determining that the Greater Connecticut 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS by its applicable attainment date (June 15, 2010).

IV. Statutory and Executive Order Reviews

These actions make a determination of attainment based on air quality, and result in the suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by State law. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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, these actions do 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 these actions 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 November 1, 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 19, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

■ Part 52 of 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 H—Connecticut

■ 2. Section 52.377 is amended by adding paragraph (f) to read as follows:

§ 52.377 Control strategy: Ozone.

* * * * *

(f) Determination of Attainment. Effective September 30, 2010, EPA is determining that the Greater Connecticut 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard. Under the provisions of EPA's ozone implementation rule (*see* 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for as long as the area does not monitor any violations of the 1997 8-hour ozone standard. If a violation of the 1997 ozone NAAQS is monitored in the Greater Connecticut 8-hour ozone nonattainment area, this determination shall no longer apply.

In addition, this area met its June 15, 2010 attainment deadline for the 1997 ozone standard.

[FR Doc. 2010–21677 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R01–RCRA–2010–0676; FRL–9193–1]

Adequacy of New Hampshire Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a modification to New Hampshire's approved municipal solid waste landfill (MSWLF) program. The approved modification allows the State to issue Research, Development, and Demonstration (RD&D) Permits to owners and operators of MSWLF in accordance with its State law. On March 22, 2004, EPA issued final regulations allowing research, development, and demonstration (RD&D) permits to be issued to certain municipal solid waste landfills by approved states. On June 28, 2010 New Hampshire submitted an application to EPA Region 1 seeking Federal approval of its RD&D requirements. After thorough review EPA Region 1 is determining that New Hampshire's RD&D permit requirements are adequate through this direct final action.

DATES: This determination of RD&D program adequacy for New Hampshire will become effective November 29, 2010 without further notice unless EPA

receives adverse comments on or before November 1, 2010. If adverse comments are received, EPA will review the comments and publish another **Federal Register** document responding to the comments and either affirming or revising the initial decision.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2010–0676, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: hsieh.juiyu@epa.gov.*
- *Fax:* (617) 918–0646, to the attention of Juiyu Hsieh.
- *Mail:* Juiyu Hsieh, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–01), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.
- *Hand Delivery or Courier:* Deliver your comments to Juiyu Hsieh, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–01), EPA New England—Region 1, 5 Post Office Square, 7th floor, Boston, MA 02109–3912. Such deliveries are only accepted during the Office's normal hours of operation.

Instructions: Identify your comments as relating to Docket ID No. EPA–R01–RCRA–2010–0676. 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 claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: EPA has established a docket for this action under Docket ID No. EPA–R01–RCRA–2010–0676. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although it may be listed in the index, some information might not be publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109–3912; by appointment only; *tel:* (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Juiyu Hsieh, Remediation and Restoration II Branch (Mail Code OSRR07–1), U.S. EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109, telephone: (617) 918–1646, *hsieh.juiyu@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are available only in states with approved MSWLF permit programs that have been modified to incorporate RD&D permit authority. While States are not required to seek approval to allow permits under this new provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

New Hampshire's MSWLF permit program was approved on February 14, 1995 (60 FR 8384). On June 28, 2010, New Hampshire applied for approval of its RD&D permit provisions which are included in the New Hampshire amended regulations under Solid Waste Rule ENV–Sw 806.05.

B. Decision

After a thorough review, EPA is determining that the New Hampshire RD&D permit provisions as set out in Solid Waste Rule ENV–Sw 806.05 are adequate to comply with the Federal criteria as set out in 40 CFR 258.4. The State regulations regarding RD&D permits incorporate by reference all of the requirements of 40 CFR 258.4, while specifying particular requirements which are either equivalent to or more stringent than the requirements of 40 CFR 258.4.

C. Statutory and Executive Order Reviews

This action approves State solid waste requirements pursuant to Resource Conversation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866:* Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order 12866;
2. *Paperwork Reduction Act:* This action does not impose an information collection burden under the Paperwork Reduction Act;
3. *Regulatory Flexibility Act:* Since this action will not add any requirements not already imposed under State law, I certify that this action will not have a significant economic impact on a substantial number of small entities;
4. *Unfunded Mandates Reform Act:* Because this action approves pre-existing requirement under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act;
5. *Executive Order 13132:* Federalism—Executive Order 13132 does not apply to this action because this action will not have federalism implications (*i.e.,* there are no substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities between Federal and State governments);
6. *Executive Order 13175:* Consultation and Coordination with Indian Tribal Governments—Executive Order 13175 does not apply to this

action because it will not have Tribal implications (*i.e.,* there are no 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);

7. *Executive Order 13045:* Protection of Children from Environmental Health and Safety Risks—This action is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks;

8. *Executive Order 13211:* Actions That Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866;

9. *National Technology Transfer Advancement Act:* This provision directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards and bodies. EPA approves State programs so long as the State programs adequately meet the criteria set out in 40 CFR part 258. It would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the 40 CFR part 258 criteria. Thus, the National Technology Transfer Advancement Act does not apply to this action;

10. *Congressional Review Act:* EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register.**

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: August 16, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England, Region 1.

[FR Doc. 2010–21117 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2010–0502; FRL–9194–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is publishing this direct final Notice of Deletion for the Powersville Site Superfund Site (Site), located in Peach County, Georgia, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Georgia, through the Georgia Environmental Protection Division (GAEPD), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and Five Year Reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective November 1, 2010 unless EPA receives adverse comments by September 30, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No., EPA–R04–SFUND–2010–0502, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Web site: http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: farrier.brian@epa.gov.*
- *Fax:* (404) 562–8896, *Attention:* Brian Farrier.
- *Mail:* Brian Farrier, Remedial Project Manager, Superfund Remedial Section C, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Hand Delivery: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–R04–SFUND–2010–0502. 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 the hard copy. Publicly available docket

materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. EPA Record Center, *attn:* Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, *Phone:* (404) 562–8862, Hours 8 a.m.–4 p.m., Monday through Friday by appointment only; or, Thomas Public Library, 315 Martin Luther King, Jr. Drive, Fort Valley, GA 31030, *Phone:* 478–825–1640, Hours 9 a.m.–6 p.m., Monday through Thursday, 9 a.m.–1 p.m. Friday, closed Saturday and Sunday.

FOR FURTHER INFORMATION CONTACT: Brian Farrier, Remedial Project Manager, Superfund Remedial Section C, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Farrier can be reached via electronic mail at *farrier.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 4 is publishing this direct final Notice of Deletion of the Powersville Site Superfund Site from the NPL. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which EPA promulgated pursuant to section 105 of the CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in the Section 300.425(e)(3) of the NCP, Sites deleted from the NPL remain eligible for Fund-financed remedial actions if conditions at a deleted Site warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective November 1, 2010 unless EPA receives adverse comments by September 30, 2010. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent To Delete in the "Proposed Rules" section of the **Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent To Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria to delete sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Powersville Site Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a Site deleted from the NPL, the deleted Site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Georgia before developing this direct final Notice of Deletion and the Notice of Intent To Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent To Delete prior to their publication today, and the state, through the GAEPD, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, [Enter major local newspaper of general circulation]. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a Site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a Site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

Powersville Site Superfund Site, GA Hwy. 49 N., Powersville, Georgia 31074. EPA ID: GAD980496954.

The Powersville Site, located on GA Hwy. 49 N. in Powersville, Georgia, occupies approximately 15 acres in a predominantly rural area. From the early 1940s to 1969, this landfill was a

borrow pit which provided sand and fill material to the county for local use. During 1969, Peach County began operation of a sanitary landfill receiving both municipal and industrial wastes. Disposal records indicate that pesticide manufacturing wastes were disposed in the landfill until 1978. In 1972, the State of Georgia suggested a separate area be maintained for pesticide wastes, which was done in 1973. Disposal records indicate pesticide wastes were disposed in the municipal section of the landfill prior to June 1973 and in the hazardous waste area between June 1973 and 1978. Neither the quantity nor the location of the pesticide wastes in the municipal section of the landfill is known. The County closed the landfill in 1979. The primary contaminants of concern at the Site include, but are not limited to, vinyl chloride, 1,2-dichloroethane, lead, chromium, and pesticides. The Site was proposed for the NPL September 8, 1983 (48 FR 40674) and finalized on the NPL October 15, 1984 (49 FR 40320).

Remedial Investigation, Feasibility Study (RI/FS)

The Remedial Investigation (RI) and Feasibility Study (FS) were conducted between December 28, 1984 and September 30, 1987.

Analytical results of the RI sampling indicated the presence of gamma-BHC, 1,2-dichloroethane, lead, chromium, and vinyl chloride in the groundwater beneath the Site; however, well-defined plumes did not exist. The pesticides gamma-BHC, dieldrin, chlordane, and toxaphene were also detected in the soil samples taken at the Site. Off-site soil samples were found to have no detectable chemical concentrations.

The FS evaluated 13 alternatives including various combinations of capping for the landfill, incineration, solidification/stabilization, pump and treat of groundwater, and alternative water sources.

Selected Remedy

EPA's Record of Decision (ROD) was signed on September 30, 1987, and the State of Georgia concurred with the selected remedy. The selected alternative included the following:

- Surface cover systems for the hazardous waste and municipal landfill area;
- Installation of a minimum of eight additional groundwater monitoring wells;
- Provision of an alternative water supply for selected residents near site;
- Imposition of on-site and off-site deed restrictions to prohibit specific actions; and
- Development and implementation of an operation and maintenance (O&M) plan for the remedy.

The remedial objective for the Powersville Site was to eliminate potential health hazards due to the impact of gamma-BHC, vinyl chloride, 1,2-dichloroethane, lead, chromium, and toxaphene in the landfill.

Remedy Implementation

Remedy Component 1—Surface Cover

A low permeability liner was installed over both the hazardous waste disposal area and the municipal waste disposal area. The municipal waste area liner consists of a 40 ml thick high density polyethylene (HDPE) liner. The hazardous waste area liner has an additional 0.25 inch thick bentonite liner. The liners are covered with 1.5 feet of sandy soil for better drainage. Two feet of soil is then layered on top of the liner. A vegetative layer was then used to secure the soil cover. Terracing was used to alleviate the steepness of the slope to reduce erosional issues. Other grading was done to divert stormwater away from either landfill cover.

Remedy Component 2—Installation of Groundwater Monitoring Wells

The groundwater monitoring system was designed to yield samples from the uppermost aquifer that are representative of the water that passes through the downgradient area of the landfill site. There were two existing wells. Seven more were added (6 downgradient, 1 upgradient). These seven wells were installed during three separate field events and were intended to monitor the natural attenuation of contaminants in the groundwater.

Remedy Component 3—Alternate Water Source

The alternate water supply system is owned and operated by the Fort Valley Utility Commission. The municipal water system was extended to include the properties possibly affected by the site. The Fort Valley Utility Commission conducts O & M on the water supply system.

Remedy Component 4—Institutional Controls

On December 1, 1994 a Notation on Deed was filed on the landfill property. The notation states that the property is on Georgia's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances. The site itself was required by the ROD to have deed restrictions placed upon it to prohibit the drilling of water wells and any activities that could cause damage to the remedy. In addition, properties between the Site and the unnamed tributary to Mule Creek were required by the ROD to have deed restrictions placed upon them to prohibit the drilling of water wells. The method for executing the deed restrictions was through restrictive covenant agreements. In 1993, restrictive covenants were placed on six properties adjacent to the landfill prohibiting the drilling of water wells. On March 23, 2010, a restrictive covenant was recorded for the landfill parcel. All institutional controls needed at the Site have been implemented.

Remedy Component 5—Operation & Maintenance Plan

There are eight major tasks involved in the schedule for ordinary O&M activities. They are the following:

- Groundwater Monitoring—The groundwater monitoring program consisted of quarterly monitoring from 1993 to 2005, with samples collected from monitoring wells MW2, MW7, MW20, MW21, MW22, MW23, MW24, MW25, and MW26. All samples were analyzed for Volatial Organic Compounds (VOC), pesticides, and metals. This activity has been discontinued.
- Maintenance of Vegetation—Mowing of the covers and other vegetated site areas is conducted twice per year. Fertilization of the covers is conducted once per year. Lime may be added every four to six years to maintain a pH between 6 and 7.
- Cover Settlement—Inspection and monitoring for cover settlement was conducted quarterly for the first two years then semi-annually since that time.
- Site Structure—The following structures are inspected quarterly: concrete channels, rip rap, fence and signs, drainage areas, benchmarks, gas vents, settlement monitoring stations, all guard posts, and cover drainage pipes cleanout ports. Repairs are performed as needed.
- Gas Production Monitoring—Each gas vent is checked semi-annually for the first two years and has been annually since that time.
- Cost Estimate Updates—The cost estimate is updated annually.
- Deed Restrictions—In 1993, restrictive covenants were placed on six properties adjacent to the landfill prohibiting the drilling of water wells. On March 23, 2010, a restrictive covenant was recorded for the landfill

parcel. All institutional controls needed at the Site have been implemented.

• Deliverables—Regular reports are submitted to the O&M administrator, GEPD, and EPA.

Cleanup Goals

The cleanup goals for soil and groundwater are shown on the following tables. The cleanup goals for surface water were considered to be the same as groundwater as implied by the ROD.

CLEANUP LEVELS FOR GROUNDWATER

Contaminant	ROD cleanup goals (μg/L)	Revised EPA cleanup goals (μg/L)
gamma-BHC	4	4
vinyl chloride	1	2
1,2-dichloroethane	5	5
Lead	50	15
Chromium	50	100
Toxaphene	N/A	3

Nine groundwater monitoring wells were sampled quarterly from 1993 until 2005 when groundwater contaminant levels reached the cleanup goals shown above. On July 19, 2006, GAEPD notified EPA that groundwater monitoring would be discontinued and requested EPA pursue deleting the Site from the NPL. The groundwater data from 2004 through 2005 were below cleanup goals for 1,2-dichloroethane, lead, and chromium, except for one detection of chromium at 410 ug/L during the third quarter 2004 (EPA, 2008).

Operation and Maintenance

As mentioned in Remedy Component 5, there are eight major tasks outlined as part of O&M. The county has assumed responsibility for implementing the ongoing components of the 1993 O&M plan.

Five-Year Reviews

The first five-year review was completed in December 1997 and the second was completed in September 2003. These reviews concluded that the selected remedy remains protective of human health and the environment.

The third statutory Five-Year Review was completed in September 2008 pursuant to EPA's *Comprehensive Five-Year Review Guidance* (OSWER No. 9355.7–03B–P, June 2001). The Five-Year Review concluded that remedial actions at the Powersville Site Superfund Site are protective, in the short-term, of human health and the environment, and exposure pathways that could result in unacceptable risks are being controlled. However, in order for the remedy to be protective in the long term, it was determined that restrictive covenants were still needed on three parcels. Those parcels were the landfill, the Peach County parcel acquired from the Trustees of Powersville Lodge No. 134 located adjacent to the landfill, and parcel No. 043B 002 owned by Adele Hogan. The Trustees of Powersville Lodge No. 134 parcel has been combined with the landfill parcel and does not need a separate restrictive covenant. EPA has also determined that the Hogan parcel is not impacted by contaminated groundwater and therefore does not need a restrictive covenant. On March 23, 2010, a restrictive covenant was recorded for the landfill parcel in the Office of the Clerk, Superior Court, Peach County, Georgia, at Deed Book 438, pages 341–345. All institutional controls required at the Site have been implemented.

Because hazardous materials remain at the Site inside the landfill above levels that allow for unlimited use and unrestricted exposure, Section 121 of CERCLA requires ongoing statutory review to be conducted no less than every five years from the start of remedial actions. The next Five-Year Review will be completed by August 2013.

Community Involvement

Throughout the removal and remedial process, EPA has kept the public informed of the activities being conducted at the Site by way of public meetings, progress fact sheets, and the announcement through local newspaper advertisement on the availability of documents such as the RI/FS, Risk Assessment, ROD, Proposed Plan and Five-Year Reviews.

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories identified above.

Determination That the Site Meets the Criteria for Deletion From the NCP

This Site meets all the Site completion requirements as specified in Office of Solid Waste and Emergency Response (OSWER) Directive 9320.2–09–A–P, *Close Out Procedures for National Priorities List Sites.* Specifically, confirmatory sampling verifies that the Site has achieved the ROD cleanup standards, and that all cleanup actions specified in the ROD have been implemented. The only remaining activity to be performed is O&M that Peach County will conduct.

V. Deletion Action

The EPA, with concurrence of the State of Georgia through the GAEPD, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective November 1, 2010 unless EPA receives adverse comments by September 30, 2010. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

Dated: August 3, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing "Powersville Site, Peach County, GA".

[FR Doc. 2010–21442 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

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

RIN 1018–AX06

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2010–11 season.

DATES: This rule is effective on September 1, 2010.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2010

On May 13, 2010, we published in the **Federal Register** (75 FR 27144) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2010–11 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the May 13 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings.

On June 10, 2010, we published in the **Federal Register** (75 FR 32872) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 10 supplement also provided detailed information on the 2010–11 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 23 and 24, 2010, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2010–11 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2010–11 regular waterfowl seasons. On July 29, 2010, we published in the **Federal Register** (75 FR 44856) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 30, 2010, we published in the **Federal Register** a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

On July 28–29, 2010, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2010–11 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2010–11 late-season migratory bird hunting regulations in an August 25, 2010 **Federal Register** (75 FR 52398).

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

National Environmental Protection Act (NEPA) Consideration

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

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program.

Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available by either writing to the address indicated under **ADDRESSES** or by viewing on our Web site at *http://www.fws.gov/migratorybirds.*

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

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

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

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

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (*see* discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. At this time, we are proposing no changes to the season frameworks for the 2010–11 season, and as such, we will again consider these three alternatives. However, final frameworks will depend on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (*see* **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2010–0040.

Small Business Regulatory Enforcement Fairness Act

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

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013). A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

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

Civil Justice Reform—Executive Order 12988

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

Takings Implication Assessment

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

Energy Effects—Executive Order 13211

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian Tribes and have determined that there are no effects on Indian trust resources. However, in the May 13 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010–11 migratory bird hunting season. The resulting proposals were contained in an August 6, 2010, proposed rule (75 FR 47682). By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

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

Dated: August 25, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742 a–j, Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

BILLING CODE 4310–55–P

-Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits Bag	Limits Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves (1)	Sept. 4-Nov. 1	20	20
Scaly-naped pigeons	Sept. 4-Nov. 1	5	5
Ducks	Nov. 20-Dec. 20 &	6	12
	Jan. 8-Jan. 31	6	12
Common Moorhens	Nov. 20-Dec. 20 &	6	12
	Jan. 8-Jan. 31	6	12
Common Snipe	Nov. 20-Dec. 20 &	8	16
	Jan. 8-Jan. 31	8	16

(1) Not more than 10 Zenaida and 3 mourning doves in the aggregate.

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, Caribbean coot, white-crowned pigeon, and plain pigeon.

Closed Areas: Closed areas are described in the July 29, 2010, Federal Register (75 FR 44586).

(b) Virgin Islands

	Season Dates	Limits Bag	Limits Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds. All Offshore Cays under jurisdiction of the Virgin Islands Government are closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the July 29, 2010, Federal Register (75 FR 44586).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 16-Dec. 31
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits

Area	Ducks (1)	Dark Geese (2)(3)(4)	Light Geese (2)	Brant(2)(3)	Common Snipe	Sandhill Cranes (5)
North Zone	10-30	4-8	4-8	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	4-8	2-4	8-16	2-4
Southeast Zone	7-21	4-8	4-8	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	4-8	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	4-8	2-4	8-16	2-4

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season, including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. In Unit 15C, Kachemak Bay east of a line from Point Pogibshi to Anchor Point, the special sea duck daily bag limit for residents and nonresidents is 2 per day, 4 in possession, for harlequin and long-tailed ducks, and 1 per day, 2 in possession, for eiders (king and common collectively). Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only, with a maximum of 10 permits for the season and a daily bag and possession limit of 1. The season shall close if incidental harvest includes 5 dusky Canada geese. In Units 6-B, 6-C, and on Hinchinbrook and Hawkins Islands in Unit 6-D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose harvest reaches 40.

(4) In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession; however, no more than 2 may be Canada geese in Units 9(E) and 18; and no more than 4 may be Canada geese in Units 9(A–C), 10 (Unimak Island portion), and 17.

(5) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18, 300 permits each in Units 22 and 23, and 200 permits in Unit 17.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 29, 2010, Federal Register (75 FR 44586).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits Bag	Possession
EASTERN MANAGEMENT UNIT			
Alabama (1)			
North Zone			
12 noon to sunset	Sept. 4 only	15	15
½ hour before sunrise to sunset	Sept. 5-Oct. 3 &	15	15
	Oct. 23-Nov. 6 &	15	15
	Dec. 11-Jan. 4	15	15
South Zone			
12 noon to sunset	Oct. 2 only	15	15
½ hour before sunrise to sunset	Oct. 3-Oct. 31 &	15	15
	Nov. 25-Nov. 28 &	15	15
	Dec. 4-Jan. 8	15	15
Delaware	Sept. 1-Sept. 25 &	15	30
	Oct. 16-Oct. 30 &	15	30
	Dec. 10-Jan. 8	15	30
Florida (1)			
12 noon to sunset	Oct. 2-Oct. 25	15	30
½ hour before sunrise to sunset	Nov. 13-Nov. 28 &	15	30
	Dec. 11-Jan. 9	15	30
Georgia (1)			
12 noon to sunset	Sept. 4 only	15	30
½ hour before sunrise to sunset	Sept. 5-Sept. 19	15	30
	Oct. 9-Oct. 17 &	15	30
	Nov. 25-Jan. 8	15	30
Illinois (1) (2)	Sept. 1-Oct. 31 &	15	30
	Nov. 6-Nov. 14	15	30
Indiana (1)	Sept. 1-Oct. 17 &	15	30
	Nov. 5-Nov. 27	15	30
Kentucky (1)			
11 a.m. to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Oct. 24 &	15	30
	Nov. 25-Dec. 3 &	15	30
	Jan. 1-Jan. 7	15	30
Louisiana (1)			
North Zone			
12 noon to sunset	Sept. 4 only	15	30
½ hour before sunrise to sunset	Sept. 5-Sept. 19 &	15	30
	Oct. 9-Nov. 7 &	15	30
	Dec. 11-Jan. 3	15	30

	Season Dates	Limits Bag	Possession
Louisiana (cont.)			
South Zone			
12 noon to sunset	Sept. 4 only	15	30
½ hour before sunrise to sunset	Sept. 5-Sept. 12 &	15	30
	Oct. 16-Nov. 28 &	15	30
	Dec. 18-Jan. 3	15	30
Maryland (1)			
12 noon to sunset	Sept. 1-Oct. 9	15	30
½ hour before sunrise to sunset	Nov. 13-Nov. 26 &	15	30
	Dec. 16-Jan. 1	15	30
Mississippi (1)			
North Zone	Sept. 4-Sept. 26 &	15	30
	Oct. 9-Nov. 3 &	15	30
	Dec. 26-Jan. 15	15	30
South Zone	Sept. 4-Sept. 12 &	15	30
	Oct. 9-Nov. 4 &	15	30
	Dec. 13-Jan. 15	15	30
North Carolina (1)			
12 noon to sunset	Sept. 4	15	30
½ hour before sunrise to sunset	Sept. 5-Oct. 9 &	15	30
	Nov. 22-Nov. 27 &	15	30
	Dec. 18-Jan. 14	15	30
Ohio (1)	Sept. 1-Oct. 24 &	15	30
	Dec. 6-Dec. 21	15	30
Pennsylvania (1)			
12 noon to sunset	Sept. 1-Sept. 28 &	15	30
½ hour before sunrise to sunset	Oct. 23-Nov. 27 &	15	30
	Dec. 27-Jan. 1	15	30
Rhode Island			
12 noon to sunset	Sept. 18-Oct. 2	12	24
½ hour before sunrise to sunset	Oct. 16-Nov. 13 &	12	24
	Dec. 22-Jan. 6	12	24
South Carolina			
12 noon to sunset	Sept. 4-Sept. 6	15	30
½ hour before sunrise to sunset	Sept. 7-Oct.9 &	15	30
	Nov. 20-Nov. 27 &	15	30
	Dec. 21-Jan. 15	15	30

	Season Dates	Limits Bag	Limits Possession
Tennessee			
12 noon to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Sept. 26 &	15	30
	Oct. 9-Oct. 24 &	15	30
	Dec. 19-Jan. 15	15	30
Virginia			
12 noon to sunset	Sept. 4-Sept. 10	15	30
½ hour before sunrise to sunset	Sept. 11-Oct 12 &	15	30
	Oct. 20-Nov. 6 &	15	30
	Dec. 27-Jan. 8	15	30
West Virginia			
12 noon to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Oct. 9 &	15	30
	Oct. 25-Nov. 13 &	15	30
	Dec. 22-Jan. 1	15	30
Wisconsin	Sept. 1-Nov. 9	15	30
CENTRAL MANAGEMENT UNIT			
Arkansas (1)	Sept. 4-Oct. 19 &	15	30
	Dec. 11-Jan. 3	15	30
Colorado (1)	Sept. 1-Nov. 9	15	30
Kansas (1)	Sept. 1-Oct. 31 &	15	30
	Nov. 6-Nov. 14	15	30
Minnesota	Sept. 1-Oct. 30	15	30
Missouri (1)	Sept. 1-Nov. 9	15	30
Montana	Sept. 1-Oct. 30	15	30
Nebraska (1)	Sept. 1-Oct. 30	15	30
New Mexico (1)			
North Zone	Sept. 1-Nov. 9	15	30
South Zone	Sept. 1-Oct. 9 &	15	30
	Dec. 1-Dec. 31	15	30
North Dakota	Sept. 1-Oct. 30	15	30

	Season Dates	Limits Bag	Possession
Oklahoma (1)			
North Zone	Sept. 1-Nov. 9	15	30
Southwest Zone	Sept. 1-Oct. 31 &	15	30
	Dec. 25-Jan. 2	15	30
South Dakota	Sept. 1-Nov. 9	15	30
Texas (3)			
North Zone	Sept. 1-Oct. 24 &	15	30
	Dec. 25-Jan. 9	15	30
Central Zone	Sept. 1-Oct. 24 &	15	30
	Dec. 25-Jan. 9	15	30
South Zone			
Special Area	Sept. 17-Oct. 31 &	15	30
	Dec. 25-Jan. 14	15	30
(Special Season)			
12 noon to sunset	Sept. 4-Sept. 5 &	15	30
	Sept. 11-Sept. 12	15	30
Remainder of the			
South Zone	Sept. 17-Oct. 31 &	15	30
	Dec. 25-Jan. 18	15	30
Wyoming	Sept. 1-Nov. 9	15	30
WESTERN MANAGEMENT UNIT			
Arizona (4)	Sept. 1-Sept. 15 &	10	20
	Nov. 19-Jan. 2	10	20
California (5)	Sept. 1-Sept. 15 &	10	20
	Nov. 13-Dec. 26	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (5)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah (5)	Sept. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 30	10	20
OTHER POPULATIONS			
Hawaii (6)	Nov. 6-Nov. 28 &	10	10
	Dec. 4-Dec. 26 &	10	10
	Jan. 1-Jan. 17	10	10

(1) The daily bag limit is for mourning and white-winged doves in the aggregate.

(2) In Illinois, shooting hours are sunrise to sunset.

(3) In Texas, the daily bag limit is either 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(4) In Arizona, during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-wing doves. During November 19 through January 2, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit.

(5) In Utah and the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(6) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) Band-tailed Pigeons

	Season Dates	Limits	
		Bag	Possession
Arizona	Sept. 10-Oct. 3	5	10
California			
North Zone	Sept. 18-Sept. 26	2	4
South Zone	Dec. 18-Dec. 26	2	4
Colorado	Sept. 1-Sept. 30	5	10
New Mexico (1)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon	Sept. 15-Sept. 23	2	4
Utah (2)	Sept. 1-Sept. 30	5	10
Washington	Sept. 15-Sept. 23	2	4

(1) In New Mexico, each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

(2) In Utah, each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 29, 2010, Federal Register (75 FR 44586).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
Connecticut (3)	Sept. 1-Sept.3 & Sept. 7-Nov. 11	Sept. 1-Sept. 3 & Sept. 7-Nov. 11	Nov. 1-Nov. 30	Nov. 1-Nov. 30
Delaware	Sept. 3-Nov. 11	Sept. 3-Nov. 11	Nov. 22-Dec. 11 & Dec. 23-Jan. 1	Nov. 22-Dec.11 & Dec. 23-Jan. 1
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 18-Jan. 16	Nov. 1-Feb. 15
Georgia	Sept. 7-Oct. 12 & Nov. 3-Dec. 6	Sept. 7-Oct. 12 & Nov. 3-Dec. 6	Dec. 18-Jan. 16	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Oct. 1-Oct. 30	Sept. 1-Dec. 16
Maryland (4)	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 6-Nov. 26 & Jan. 14-Jan. 22	Sept. 29-Nov. 26 & Dec. 13-Jan. 29
Massachusetts (5)	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 16
New Hampshire	Closed	Closed	Oct. 6-Nov. 4	Sept. 15-Nov. 4
New Jersey (6)				
North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 14-Nov. 6	Sept. 17-Jan. 1
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 6-Nov. 27 & Dec. 31-Jan. 1	Sept. 17-Jan. 1
New York (7)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Nov. 9
North Carolina	Sept. 4-Nov. 12	Sept. 4-Nov. 12	Dec. 31-Jan. 29	Nov. 12-Feb. 26
Pennsylvania(8)	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 13	Oct. 16-Nov. 27

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Rhode Island (9)	Sept. 4-Nov. 12	Sept. 4-Nov. 12	Nov. 1-Nov. 30	Sept. 4-Nov. 12
South Carolina	Sept. 8-Sept. 12 & Oct. 6-Dec. 9	Sept. 8-Sept. 12 & Oct. 6-Dec. 9	Jan. 2-Jan. 31	Nov. 14-Feb. 28
Vermont	Closed	Closed	Deferred	Deferred
Virginia	Sept. 8-Oct. 2 & Oct. 4-Nov. 17	Sept. 8-Oct. 2 & Oct. 4-Nov. 17	Oct. 30-Nov. 13 & Dec. 27-Jan. 10	Oct. 7-Oct. 11 & Oct. 22-Jan. 31
West Virginia	Sept. 1-Nov. 6	Closed	Oct. 22-Nov. 20	Sept. 1-Dec. 11
MISSISSIPPI FLYWAY				
Alabama (10)	Nov. 26-Jan. 30	Nov. 26-Jan. 30	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Arkansas	Sept. 11-Nov. 19	Closed	Nov. 6-Dec. 20	Nov. 1-Feb. 15
Illinois (11)	Sept. 4-Nov. 12	Closed	Oct. 16-Nov. 29	Sept. 4-Dec. 19
Indiana (12)	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Iowa (13)	Sept. 4-Nov. 12	Closed	Oct. 2-Nov. 15	Sept. 4-Nov. 30
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 29	Sept. 15-Oct. 31 & Nov. 25-Jan. 23
Louisiana (14)	Sept. 11-Sept. 26	Sept. 11-Sept. 26	Dec. 18-Jan. 31	Deferred
Michigan (15)	Sept. 15-Nov. 14	Closed	Sept. 25-Nov. 8	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 8	Closed	Sept. 25-Nov. 8	Sept. 1-Nov. 8
Mississippi	Sept. 25-Dec. 3	Sept. 25-Dec. 3	Dec. 18-Jan. 31	Nov. 13-Feb. 27
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Oct. 9-Nov. 22	Sept. 1-Nov. 28 & Dec. 6-Dec. 23
Tennessee	Deferred	Closed	Oct. 30-Dec. 13	Nov. 14-Feb. 28
Wisconsin	Deferred	Closed	Sept. 25-Nov. 8	Deferred
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 16-Nov. 29	Sept. 1-Dec. 16

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (16)	Sept. 1-Nov. 9	Closed	Sept. 19-Nov. 2	Sept. 1-Dec. 16
New Mexico (16)	Sept. 18-Nov. 26	Closed	Closed	Oct. 16-Jan. 30
North Dakota	Closed	Closed	Sept. 18-Nov. 1	Sept. 18-Dec. 5
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Dec. 15	Oct. 1-Jan. 15
South Dakota (17)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 11-Sept. 26 & Oct. 30-Dec. 22	Sept. 11-Sept. 26 & Oct. 30-Dec. 22	Dec. 18-Jan. 31	Oct. 30-Feb. 13
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
PACIFIC FLYWAY				
Arizona	Closed	Closed	Closed	Deferred
California	Closed	Closed	Closed	Oct. 16-Jan. 30
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho:				
Area 1	Closed	Closed	Closed	Deferred
Area 2	Closed	Closed	Closed	Deferred
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nevada	Closed	Closed	Closed	Deferred
New Mexico (16)	Sept. 18-Nov. 26	Closed	Closed	Oct. 16-Jan. 30
Oregon	Closed	Closed	Closed	Deferred
Utah	Closed	Closed	Closed	Oct. 2-Jan. 15
Washington	Closed	Closed	Closed	Deferred
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Delaware, the limits for clapper and king rails are 10 daily and 20 in possession. In Connecticut and Maryland, the limits for clapper and king rails are 10 daily and 10 in possession.

(3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.

(4) In Maryland, no more than 1 king rail may be taken per day.

(5) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

(6) In New Jersey, the season for king rails is closed by State regulation.

(7) In New York, the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.

(8) In Pennsylvania, the daily bag and possession limits for rails are 3 and 6, respectively.

(9) In Rhode Island, the sora and Virginia rails limits are 3 daily and 6 in possession, singly or in the aggregate; the clapper and king rail limits are 1 daily and 2 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.

(10) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(11) In Illinois, shooting hours are from sunrise to sunset.

(12) In Indiana, the sora rail limits are 25 daily and 25 in possession. The season on Virginia rails is closed.

(13) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(14) Additional days occurring after September 30 will be published with the late season selections.

(15) In Michigan, the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.

(16) In Nebraska and New Mexico, the rail limits are 10 daily and 20 in possession.

(17) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 29, 2010, Federal Register (75 FR 44586).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
Delaware	Sept. 3-Nov. 11	15	30
Florida (1)	Sept. 1-Nov.9	15	30
Georgia	Deferred	--	-
New Jersey	Sept. 1-Nov. 8	10	20
New York			
Long Island	Closed	--	-
Remainder of State	Sept. 1-Nov. 9	8	16
North Carolina	Sept. 4-Nov. 12	15	30
Pennsylvania	Sept. 1-Nov. 9	3	6
South Carolina	Sept. 8-Sept. 12 &	15	30
	Oct. 6-Dec. 9	15	30
Virginia	Deferred	--	-
West Virginia	Deferred	--	-
MISSISSIPPI FLYWAY			
Alabama	Nov. 26-Jan. 30	15	15
Arkansas	Sept. 1-Nov. 9	15	30
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana (2)	Sept. 11-Sept. 26	15	30
Michigan	Deferred	--	--
Minnesota	Deferred	--	--
Mississippi	Sept. 25-Dec. 3	15	30
Ohio	Sept. 1-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	-

	Season Dates	Limits Bag	Possession
CENTRAL FLYWAY			
New Mexico			
Zone 1	Oct. 2-Dec. 10	1	2
Zone 2	Oct. 2-Dec. 10	1	2
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 11-Sept. 26 &	15	30
	Oct. 30-Dec. 22	15	30
Wyoming	Deferred	--	-
PACIFIC FLYWAY			
All States	Deferred	--	-

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and long-tailed ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and long-tailed ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Possession
Connecticut (1)	Sept. 21-Jan. 22	5	10
Delaware	Sept. 28-Jan. 29	7	14
Georgia	Deferred	--	--
Maine (2)	Oct. 1-Jan. 31	7	14
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire (3)	Oct. 1-Jan. 15	7	14
New Jersey	Sept. 23-Jan. 25	7	14

	Season Dates	Limits Bag	Possession
New York	Oct. 16-Jan. 30	7	14
North Carolina	Deferred	--	-
Rhode Island	Oct. 9-Jan. 23	5	10
South Carolina	Deferred	--	--
Virginia	Deferred	--	-

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Connecticut, the daily bag limit may include no more than 4 long-tailed ducks.

(2) In Maine, the daily bag limit for eiders is 4, and the possession limit is 8.

(3) In New Hampshire, the daily bag limit may include no more than 4 eiders, or 4 long-tailed ducks.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
Delaware (1)	Sept. 11-Sept. 29	4	8
Florida (2)	Sept. 25-Sept. 29	4	8
Georgia	Sept. 11-Sept. 26	4	8
Maryland (1)(3)	Sept. 16-Sept. 30	4	8
North Carolina (1)	Sept. 11-Sept. 29	4	8
South Carolina (3)	Sept. 15-Sept. 30	4	8
Virginia (1)	Sept. 20-Sept. 30	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 11-Sept. 26	4	8
Arkansas (3)	Sept. 11-Sept. 26	4	8

	Season Dates	Limits Bag	Limits Possession
Illinois (3)	Sept. 4-Sept. 19	4	8
Indiana (3)	Sept. 4-Sept. 19	4	8
Iowa (4)			
North Zone	Sept. 18-Sept. 22	--	--
South Zone	Sept. 18-Sept. 22	--	--
Kentucky (2)	Sept. 15-Sept. 19	4	8
Louisiana	Sept. 11-Sept. 26	4	8
Mississippi	Sept. 11-Sept. 26	4	8
Missouri (3)	Sept. 11-Sept. 26	4	8
Ohio (3)	Sept. 4-Sept. 19	4	8
Tennessee (2)	Sept. 11-Sept. 15	4	8
CENTRAL FLYWAY			
Colorado (1)	Sept. 11-Sept. 19	4	8
Kansas			
Low Plains	Sept. 11-Sept. 26	4	8
High Plains	Sept. 18-Sept. 26	4	8
Nebraska (1)			
Low Plains	Sept. 4-Sept. 19	4	8
High Plains	Sept. 4-Sept. 12	4	8
New Mexico	Sept. 18-Sept. 26	4	8
Oklahoma	Sept. 11-Sept. 26	4	8
Texas			
High Plains	Sept. 11-Sept. 26	4	8
Rest of State	Sept. 11-Sept. 26	4	8

(1) Area restrictions. See State regulations.

(2) In Florida, Kentucky, and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(3) Shooting hours are from sunrise to sunset.

(4) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
Connecticut (1)			
North Zone	Sept. 1-Sept. 3 &	15	30
	Sept. 7-Sept. 30	15	30
South Zone	Sept. 15-Sept. 30	15	30
Delaware	Sept. 1-Sept. 25	15	30
Florida	Sept. 4-Sept. 29	5	10
Georgia	Sept. 4-Sept. 26	5	10
Maine			
Northern Zone	Sept. 1-Sept. 25	6	12
Southern Zone	Sept. 1-Sept. 25	8	16
Maryland (1)(2)			
Eastern Unit	Sept. 1-Sept. 15	8	16
Western Unit	Sept. 1-Sept. 25	8	16
Massachusetts			
Central Zone	Sept. 7-Sept. 25	7	14
Coastal Zone	Sept. 7-Sept. 25	7	14
Western Zone	Sept. 7-Sept. 25	7	14
New Hampshire	Sept. 7-Sept. 25	5	10
New Jersey (1)(2)(3)	Sept. 1-Sept. 30	15	30
New York			
Lake Champlain Zone	Sept. 7-Sept. 25	5	10
Northeastern Zone	Sept. 1-Sept. 25	8	16
Western Zone	Sept. 1-Sept. 25	8	16
Southeastern Zone	Sept. 1-Sept. 25	8	16
Western Long Island Zone	Closed		
Central Long Island Zone	Sept. 7-Sept. 30	8	16
Eastern Long Island Zone	Sept. 7-Sept. 30	8	16
North Carolina (4)(5)	Sept. 1-Sept. 30	15	30
Pennsylvania (1)			
SJBP Zone (6)	Sept. 1-Sept. 25	3	6
Rest of State (7)	Sept. 1-Sept. 25	8	16
Rhode Island (1)	Sept. 1-Sept. 30	15	30
South Carolina			
Early-Season Hunt Unit	Sept. 1-Sept. 30	15	30

	Season Dates	Limits Bag	Possession
Vermont			
Lake Champlain Zone (8)	Sept. 7-Sept. 25	5	10
Interior Vermont Zone	Sept. 7-Sept. 25	5	10
Connecticut River Zone (9)	Sept. 7-Sept. 25	5	10
Virginia (10)	Sept. 1-Sept. 25	10	20
West Virginia	Sept. 1-Sept. 18	5	10
MISSISSIPPI FLYWAY			
Alabama	Sept. 1-Sept. 15	5	10
Arkansas	Sept. 1-Sept. 15	5	10
Illinois			
Northeast Zone	Sept. 1-Sept. 15	5	10
North Zone	Sept. 1-Sept. 15	5	10
Central Zone	Sept. 1-Sept. 15	5	10
South Zone	Sept. 1-Sept. 15	2	4
Indiana	Sept. 1-Sept. 15	5	10
Iowa			
South Goose Zone			
Des Moines Goose Zone	Sept. 4-Sept. 12	5	10
Cedar Rapids/Iowa City Goose Zone	Sept. 4-Sept. 12	5	10
Remainder of South Zone	Closed		
North Goose Zone			
Cedar Falls/Waterloo Zone	Sept. 4-Sept. 12	5	10
Remainder of North Zone	Closed		
Kentucky (11)	Sept. 4-Sept. 12	2	4
Michigan			
Upper Peninsula	Sept. 1-Sept. 10	5	10
Lower Peninsula:			
Huron, Saginaw, and Tuscola Counties	Sept. 1-Sept. 10	5	10
Remainder	Sept. 1-Sept. 15	5	10
Minnesota	Sept. 4-Sept. 22	5	10
Mississippi (12)	Sept. 1-Sept. 15	5	10
Ohio (11)	Sept. 1-Sept. 15	4	8
Tennessee	Sept. 1-Sept. 15	5	10
Wisconsin	Sept. 1-Sept. 15	5	10

	Season Dates	Limits Bag	Possession
CENTRAL FLYWAY			
Nebraska (11)			
Sept. Canada Goose Unit	Sept. 4-Sept. 12	5	10
North Dakota			
Missouri River Zone	Sept. 1-Sept. 7	5	10
Remainder of State	Sept. 1-Sept. 15	5	10
Oklahoma	Sept. 11-Sept. 20	5	10
South Dakota (11)	Sept. 4-Sept. 30	8	16
PACIFIC FLYWAY			
Colorado:	Sept. 1-Sept. 9	3	6
Oregon:			
Northwest Zone	Sept. 11-Sept. 20	5	10
Southwest Zone (13)	Sept. 11-Sept. 15	5	10
East Zone (13)	Sept. 11-Sept. 15	5	10
Washington:			
Mgmt. Area 2B	Sept. 1-Sept. 15	5	10
Mgmt. Areas 1 & 3	Sept. 10-Sept. 15	5	10
Mgmt. Area 4 & 5	Closed	--	--
Mgmt. Area 2A	Sept. 10-Sept. 15	3	6
Wyoming	Sept. 1-Sept. 8	2	4

(1) Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(2) The use of shotguns capable of holding more than 3 shotshells is allowed.

(3) The use of electronic calls is allowed.

(4) In North Carolina, the use of unplugged guns and electronic calls is allowed in that area west of U.S. Highway 17 only.

(5) In North Carolina, shooting hours are one-half hour before sunrise to one-half hour after sunset in that area west of U.S. Highway 17 only.

(6) In Pennsylvania, in the area south of SR 198 from the Ohio state line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to US Route 6, US Route 6 east to US Route 322/SR 18, US Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line, not including the Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir, excluding the area east of SR 3011 (Hartstown Road), the daily bag limit is one goose. The season is closed on State Game Lands 214.

(7) In Pennsylvania, in the area of Lancaster and Lebanon Counties north of the Pennsylvania Turnpike, east of SR 501 to SR 419, south of SR 419 to the Lebanon-Berks County line, west of the Lebanon-Berks County line and the Lancaster-Berks County line to SR 1053, west of SR 1053 to the Pennsylvania Turnpike I-76, the daily bag limit is 1 goose with a possession limit of 2 geese. On State Game Lands No. 46 (Middle Creek Wildlife Mgmt Area), the season is closed.

(8) In Vermont, in Addison County north of Route 125, the daily bag and possession limit is 2 and 4, respectively.

(9) In Vermont, the season in the Connecticut River Zone is the same as the New Hampshire Inland Zone season, set by New Hampshire.

(10) In Virginia, shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 18, and one-half hour before sunrise to sunset from September 20 to September 25 in the area east of I-95 where the September teal season is open. Shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 25 in the area west of I-95.

(11) See State regulations for additional information and restrictions.

(12) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(13) In Oregon, the season is closed in the Southcoast Zone and the Klamath County Zone.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
MISSISSIPPI FLYWAY	
Michigan (1)	
Canada:	
North Zone	Sept. 16-Oct. 30
Middle Zone	Deferred
South Zone	Deferred
White-fronted and Brant	Deferred
Light geese	Deferred
Wisconsin	
Horicon Zone	Sept. 16-Sept. 30
Collins Zone	Sept. 16-Sept. 30
Exterior Zone	Sept. 18-Sept. 30

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, and Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definitions

Youth Hunters: Includes youths 15 years of age or younger.

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season unless there is a special season already open (e.g., September Canada goose season), in which case, that season's daily bag limit will prevail.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	
Ducks, mergansers, coots, and geese	Oct. 9 & 11
Delaware	
Ducks, geese, brant, mergansers, and coots	Oct. 16
Florida	Deferred
Georgia	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Nov. 13 & 14
Maine	
Ducks, geese, mergansers, and coots	Sept. 18
Maryland (1)	Deferred
Massachusetts	Deferred
New Hampshire	
Ducks, geese, mergansers, and coots	Sept. 25 & 26
New Jersey	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
North Zone (2)	Oct. 2
South Zone	Nov. 5 & 6
Coastal Zone	Oct. 30
New York (3)	
Ducks, mergansers, coots, brant, and Canada geese (2)	
Long Island Zone	Nov. 13 & 14
Lake Champlain Zone	Sept. 25 & 26
Northeastern Zone	Sept. 18 & 19
Southeastern Zone	Sept. 18 & 19
Western Zone	Oct. 9 & 10
North Carolina	Deferred

	Season Dates
Pennsylvania	
Ducks, mergansers, Canada geese, coots, and moorhens	Sept. 18
Rhode Island	
Ducks, mergansers and coots	Oct. 23 & 24
South Carolina	Deferred
Vermont	
Ducks, geese, mergansers and coots	Sept. 25 & 26
Virginia	Deferred
West Virginia (4)	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 25
MISSISSIPPI FLYWAY	
Alabama	
Ducks, mergansers, coots, geese, moorhens, and gallinules	Feb. 12 & 13
Arkansas	Deferred
Illinois	Deferred
Ducks, geese, mergansers, coots, moorhens, and gallinules:	
North Zone	Oct. 9 & 10
Central Zone	Oct. 23 & 24
South Zone	Nov. 13 & Nov. 14
Indiana	Deferred
Iowa	
Ducks, geese, mergansers, and coots	
North Zone	Oct. 2 & 3
South Zone	Oct. 9 & 10
Kentucky	Deferred
Louisiana	Deferred
Michigan	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 18 & 19
Minnesota	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 18
Mississippi	Deferred
Missouri	Deferred
Ohio	Deferred

	Season Dates
Tennessee	Deferred
Wisconsin	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 18 & 19
CENTRAL FLYWAY	
Colorado	
Ducks, dark geese, mergansers, and coots	
Mountain/Foothills Zone	Sept. 25 & 26
Eastern Plains Zone	Sept. 25 & 26
Kansas (5)	Deferred
Montana	
Ducks, geese, mergansers, and coots	Sept. 25 & 26
Nebraska (6)	
Ducks, geese, mergansers, and coots	Sept. 25 & 26
New Mexico	
Ducks, mergansers, coots, and moorhens	
North Zone	Oct. 2 & 3
South Zone	Oct. 16 & 17
North Dakota	
Ducks, geese, mergansers, and coots	Sept. 18 & 19
Oklahoma	Deferred
South Dakota (7)	
Ducks, Canada geese, mergansers, and coots	Sept. 18 & 19
Texas	Deferred
Wyoming	
Ducks, geese, mergansers, and coots	
Zone 1	Sept. 25 & 26
Zone 2	Sept. 18 & 19
PACIFIC FLYWAY	
Arizona	Deferred
California	Deferred
Colorado	
Ducks, geese, mergansers, and coots	Oct. 16 & 17

	Season Dates
Idaho	
Ducks, Canada geese, mergansers, coots, moorhens, and gallinules	Sept. 25 & 26
Montana	
Ducks, geese, mergansers, and coots	Sept. 25 & 26
Nevada	Deferred
New Mexico	
Ducks, mergansers, moorhens, and coots	Oct. 2 & 3
Oregon (8)	
Ducks, Canada geese, mergansers, coots, moorhens, and gallinules	Sept. 25 & 26
Utah	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 18
Washington	
Ducks, Canada geese, mergansers, and coots	Sept. 25 & 26
Wyoming	
Ducks, dark geese, mergansers, and coots	Sept. 18 & 19

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In New Jersey, in the North Zone, the daily bag limit may include ducks, Canada geese, brant, mergansers, coots, moorhens, and gallinules.

(3) In New York, the daily bag limit for Canada geese is 2.

(4) In West Virginia, the accompanying adult must be at least 21 years of age.

(5) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(6) In Nebraska, see State regulations for additional information on the daily bag limit.

(7) In South Dakota, the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.

(8) In Oregon, the Canada goose season is closed for the youth hunt in the Northwest Special Permit Goose Zone and the Northwest General Zone.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 29, 2010, Federal Register (75 FR 44586).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits Bag	Possession
MISSISSIPPI FLYWAY			
Minnesota (1)			
NW Goose Zone	Sept. 4-Oct. 10	2	4
CENTRAL FLYWAY			
Colorado (1)	Oct. 2-Nov. 28	3	6
Kansas (1)(2)(3)	Nov. 10-Jan. 6	3	6
Montana			
Regular Season Area (1)	Sept. 25-Nov. 21	3	6
Special Season Area (4)	Sept. 11-Sept. 26	2 per season	
New Mexico			
Regular Season Area (1)	Oct. 31-Jan. 31	3	6
Middle Rio Grande Valley Area (4)(5)	Oct. 30-Oct. 31 &	3	6
	Nov. 13 &	3	6
	Nov. 20-Nov. 21 &	3	6
	Dec. 4-Dec. 5 &	3	6
	Jan. 15-Jan. 16	3	6
Southwest Area (4)	Oct. 30-Nov. 7 &	3	6
	Jan. 8-Jan. 9	3	6
Estancia Valley (4)	Oct. 30-Nov. 7	3	6
North Dakota (1)			
Area 1	Sept. 18-Nov. 14	3	6
Area 2	Sept. 18-Oct. 24	2	4
Oklahoma (1)	Deferred	--	-
South Dakota (1)	Sept. 25-Nov. 21	3	6

	Season Dates	Limits Bag	Possession
Texas (1)	Deferred	--	-
Wyoming			
Regular Season (Area 7) (1)	Sept. 18-Nov. 14	3	6
Riverton-Boysen Unit (Area 4) (4)	Sept. 18-Oct. 10	1 per season	
Big Horn and Park Counties (Area 6) (4)	Sept. 18-Oct. 3	1 per season	
PACIFIC FLYWAY			
Arizona (4)			
Special Season Area	Nov. 12-Nov. 14 &	3 per season	
	Nov. 19-Nov. 21 &	3 per season	
	Nov. 23-Nov. 25 &	3 per season	
	Nov. 27-Nov. 29 &	3 per season	
	Dec. 1-Dec. 3 &	3 per season	
	Dec. 10-Dec. 12	3 per season	
Lower CO River Hunt Area	Dec. 10-Dec. 12	1 per season	
Idaho (4)			
Area 1	Sept. 1-Sept. 30	2	9 per season
Areas 2-5	Sept. 1-Sept. 15	2	9 per season
Montana			
Special Season Area (4)	Sept. 11-Sept. 26	2 per season	
Utah (4)			
Rich County	Sept. 4-Sept. 12	1 per season	
Cache County	Sept. 4-Sept. 12	1 per season	
Eastern Box Elder County	Sept. 4-Sept. 12	1 per season	
Uintah County	Sept. 18-Sept. 26	1 per season	
Wyoming (4)			
Bear River Area (Area 1)	Sept. 1-Sept. 8	1 per season	
Salt River Area (Area 2)	Sept. 1-Sept. 8	1 per season	
Eden-Farson Area (Area 3)	Sept. 1-Sept. 8	1 per season	
Uinta County (Area 5)	Sept. 1-Sept. 8	1 per season	

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit and/or a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

(2) In Kansas, shooting hours are from one-half hour after sunrise until 2:00 p.m through November 30, and from sunrise until 2:00 p.m. December 1 through the close of the season.

(3) In Kansas, each person desiring to hunt sandhill cranes in Kansas is required to pass an annual, on-line sandhill crane identification examination.

(4) Hunting is by State permit only. See State regulations for further information.

(5) In New Mexico, in the Middle Rio Grande Valley Area, the season is only open for youth hunters on November 13. See State regulations for further details.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 29, 2010, Federal Register (75 FR 44586). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in an August 25, 2010, Federal Register and will be published again in a late-September 2010, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
Mourning doves	Sept. 27-Oct. 15 & Jan. 19-Feb. 5
Rails	Nov. 12-Dec. 18
Woodcock	Sept. 28-Oct. 7 & Jan. 3-Mar. 10
Snipe	Sept. 28-Oct. 7 & Jan. 3-Mar. 10

	Extended Falconry Dates
Florida	
Doves	Oct. 26-Nov. 12 & Nov. 29-Dec. 10 & Jan. 10-Jan. 16
Rails	Nov. 10-Dec. 16
Woodcock	Nov. 24-Dec. 17 & Jan. 17-Mar. 10
Common moorhens	Nov. 10-Dec. 14
Georgia	
Moorhens, gallinules, and sea ducks	Nov. 29-Dec. 10 & Jan. 31-Feb. 11
Maryland	
Doves	Oct. 10-Oct. 31 & Jan. 2- Jan. 16
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 1-Oct. 31 & Jan. 24-Mar. 10
North Carolina	
Mourning doves	Oct. 16-Nov. 20
Rails	Nov. 20-Dec. 25
Woodcock	Nov. 13-Dec. 30 & Jan. 31-Feb. 26
Common moorhens	Nov. 20-Dec. 25
Pennsylvania	
Doves	Sept. 29-Oct. 22 & Nov. 29-Dec. 11
Rails	Nov. 10-Dec. 16
Woodcock	Sept. 1-Oct. 15 & Nov. 15-Dec. 16
Snipe	Sept. 1-Oct. 15 & Nov. 29-Dec. 17

	Extended Falconry Dates
Pennsylvania (cont.)	
Moorhens and gallinules	Nov. 10-Dec. 16
Virginia	
Mourning Doves	Oct. 13-Oct. 19 & Nov. 27-Dec. 26
Woodcock	Oct. 16-Oct. 29 & Nov. 14-Dec. 26 & Jan. 11-Jan. 30
Rails	Oct. 3 & Nov. 18-Dec. 23
MISSISSIPPI FLYWAY	
Illinois	
Doves	Nov. 1-Nov. 5 & Nov. 15-Dec. 16
Rails	Sept. 1-Sept. 3 & Nov. 13-Dec. 16
Woodcock	Sept. 1-Oct. 15 & Nov. 30-Dec. 16
Indiana	
Doves	Oct. 18-Nov. 4 & Jan. 1-Jan. 19
Woodcock	Sept. 20-Oct. 14 & Nov. 29-Jan. 4
Ducks, mergansers, and coots (1) North Zone	Sept. 27-Sept. 30
Louisiana	
Doves	Sept. 20-Oct. 5
Woodcock	Oct. 28-Dec. 17 & Feb. 1-Feb. 11

	Extended Falconry Dates
Minnesota	
Woodcock	Sept. 1-Sept. 24 & Nov. 9-Dec. 16
Rails and snipe	Nov. 9-Dec. 16
Missouri	
Mourning and white-winged doves	Nov. 10-Dec. 16
Ducks, mergansers, and coots	Sept. 11-Sept. 26
Ohio	
Ducks, coots, and geese	Sept. 1-Sept. 19
Tennessee	
Mourning doves	Sept. 27-Oct. 8 & Oct. 24-Nov. 17
Ducks (1)	Sept. 16-Oct. 22
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 24
Woodcock	Sept. 1-Sept. 24
Ducks, mergansers, and coots	Sept. 18-Sept. 19
CENTRAL FLYWAY	
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 22-Sept. 30
Nebraska	
Ducks, mergansers, and coots	
High Plains	Sept. 4-Sept. 12 & Sept. 25-Sept. 26
Low Plains	Sept. 1-Sept. 30
New Mexico	
Doves	
North Zone	Nov. 10-Nov. 12 & Nov. 28-Dec. 31

	Extended Falconry Dates
New Mexico (cont.)	
Doves	
South Zone	Oct. 10-Nov. 12 & Nov. 28-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Ducks and coots	Sept. 18-Sept. 26
Sandhill cranes	
Regular Season Area	Oct. 17-Oct. 30
Estancia Valley Area	Nov. 8-Dec. 28
Common moorhens	Dec. 11-Jan. 16
Sora and Virginia rails	Nov. 27-Jan. 2
North Dakota	
Ducks, mergansers, and coots	Sept. 6-Sept. 10 & Sept. 13-Sept. 17
Snipe	Sept. 6-Sept. 10 & Sept. 13-Sept. 17
South Dakota	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 4-Sept. 11
Low Plains	
North Zone	Sept. 4-Sept. 17 & Sept. 20-Sept. 24
Middle Zone	Sept. 4-Sept. 17 & Sept. 20-Sept. 24
South Zone	Sept. 4-Sept. 17 & Sept. 20-Sept. 30
Texas	
Doves	Nov. 18-Dec. 24
Rails and gallinules	Dec. 25-Jan. 30
Woodcock	Nov. 23-Dec. 16

	Extended Falconry Dates
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	
Zone 1	Sept. 25-Sept. 26 & Oct. 20-Oct. 27
Zone 2	Sept. 18-Sept. 19 & Nov. 29-Dec. 6
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 16-Nov. 1
New Mexico	
Doves	
North Zone	Nov. 10-Nov. 12 & Nov. 28-Dec. 31
South Zone	Oct. 10-Nov. 12 & Nov. 28-Dec. 31
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Oregon	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons (3)	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Utah	
Doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Oct. 1-Dec. 16
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	Sept. 18-Sept. 19

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 2010–21711 Filed 8–30–10; 8:45 am]
BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080228326–0108–03]

RIN 0648–XY46

Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Reduction of Skate Wing Fishery Possession Limit

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces the reduction of the skate wing fishery possession limit for the Skate Management Unit for the remainder of the 2010 fishing year. Regulations governing the skate fishery require publication of this notification to advise skate-permitted vessels that 80 percent of the annual total allowable landings (TAL) of skate wings is projected to be harvested and to announce that the skate wing possession limit is reduced.

DATES: Effective September 3, 2010, through April 30, 2011.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the Northeast Skate Complex fishery are found at 50 CFR part 648. The regulations at § 648.322(b)(2) require the Northeast Regional Administrator to reduce the skate wing fishery possession limit when 80 percent of the annual total allowable landings (TAL) for skate wings is projected to be harvested, unless the reduction would be expected to prevent attainment of the entire TAL. In the final rule implementing Amendment 3 to the Northeast Skate Complex Fishery Management Plan and fishing year 2010–2011 skate fishery specifications (published in the **Federal Register** June 16, 2010, 75 FR 34049), the skate wing TAL for the 2010 fishing year was specified at 20.302 million lb (9,209 mt), and the initial skate wing possession limit was 5,000 lb (2,268 kg) wing weight (11,350 lb (5,148 kg) whole weight). This final rule requires NMFS to publish a notification in the **Federal Register** advising and notifying vessels and dealer permit holders when the Regional Administrator has determined that the skate wing possession limit should be reduced.

Based upon recent projections, the Regional Administrator anticipates that 80 percent of the 2010 skate wing TAL (16.242 million lb (7,367 mt)) will be fully harvested on or about September 2, 2010. Furthermore, without adjustment, there is a high probability that skate wing landings will exceed the TAL before the end of the fishing year. To maintain the integrity of the 2011 skate wing fishery by avoiding quota overages, this notice announces the reduction of the skate wing possession limit for the remainder of the 2010 fishing year (through April 30, 2011). Effective 0001 hour on September 3, 2010, the skate wing possession limit will be reduced from 5,000 lb (2,268 kg) wing weight (11,350 lb (5,148 kg) whole weight) to 500 lb (227 kg) wing weight (1,135 lb (515 kg) whole weight) per trip, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 25, 2010.

Carrie Selberg,

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

[FR Doc. 2010–21714 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 75, No. 168

Tuesday, August 31, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 004–2010]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, Department of Justice

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in the **Federal Register**, the Federal Bureau of Investigation (FBI), a component of the Department of Justice, has published a notice of a new Privacy Act system of records, JUSTICE/FBI–021, the Data Integration and Visualization System (DIVS). In this notice of proposed rulemaking, the FBI proposes to exempt this system from certain provisions of the Privacy Act in order to avoid interference with the national security and criminal law enforcement functions and responsibilities of the FBI. Public comment is invited.

DATES: Comments must be received by September 30, 2010.

ADDRESSES: Address all comments to Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Ave., NW., Suite 940, Washington, DC 20530–0001 or facsimile 202–307–0693. To ensure proper handling, please reference the CPCLO Order No. in your correspondence. You may review an electronic version of the proposed rule at *http://www.regulations.gov.* You may also comment via the Internet to the Privacy and Civil Liberties Office at *DOJ PrivacyACTProposedRegulations @usdoj.gov;* or by using the comment form for this regulation at *http://www.regulations.gov.* Please include the CPCLO Order No. in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Savings Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

FOR FURTHER INFORMATION CONTACT: Erin Page, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, Washington, DC 20535–0001, telephone 202–324–3000.

SUPPLEMENTARY INFORMATION: In the Notice section of today's **Federal Register**, the FBI published a new Privacy Act system of records, the Data Integration and Visualization System (DIVS), Justice/FBI–021. The system enhances the analysis and presentation of data maintained in support of the FBI's multifaceted investigative mission by enabling access, search, integration, and analytics across multiple existing databases. The system also allows users to save their queries and create a separate record of relevant identifiers and information.

In this rulemaking, the FBI proposes to exempt certain records in this Privacy Act system of records from certain provisions of the Privacy Act in order to avoid interference with the law enforcement, intelligence and counterintelligence, and counterterrorism responsibilities of the FBI as established in federal law and policy.

Regulatory Flexibility Act

This proposed rule relates to individuals as opposed to small business entities. Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, codified as a note to 5 U.S.C. 601, requires the FBI to comply with small entity requests for information and advice about compliance with statutes and regulations within FBI jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/archive/sum_sbrefa.html.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FBI consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule. The records that are contributed to DIVS are created by the FBI or other law enforcement and intelligence entities and sharing of this information electronically will not increase the paperwork burden on the public.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, it is proposed to amend 28 CFR Part 16 as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E—Exemption of Records Systems Under the Privacy Act

2. Section 16.96 is amended by adding paragraphs (v) and (w) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation Systems—limited access.

* * * * *

(v) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3); (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g) of the Privacy Act:

(1) Data Integration and Visualization System (DIVS), (JUSTICE/FBI–021).

(2) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k). Where compliance would not appear to interfere with or adversely affect the intelligence and law enforcement purpose of this system, and the overall law enforcement process, the applicable exemption may be waived by the FBI in its sole discretion.

(w) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and defuse any potential acts of terrorism or other potential violations of criminal law. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during an investigation and to take measures to impede the investigation, *e.g.,* destroy evidence or flee the area to avoid the investigation.

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the access to accounting of disclosures provision of subsection (c)(3). The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of records, it will share that information in appropriate cases.

(3) From subsection (d)(1), (2), (3), and (4), (e)(4)(G) and (H) because these provisions concern individual access to and amendment of law enforcement, intelligence and counterintelligence, and counterterrorism records and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the investigative interest of the FBI and/or other law enforcement or intelligence agencies. Providing access could compromise sensitive information classified to protect national security; disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; could provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, and witnesses.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes, and a major tenet of DIVS is that the relevance and utility of certain information that may have a nexus to terrorism or other crimes may not always be evident until and unless it is vetted and matched with other sources of information that are necessarily and lawfully maintained by the FBI.

(5) From subsection (e)(2) and (3) because application of this provision could present a serious impediment to efforts to solve crimes and improve national security. Application of these provisions would put the subject of an investigation on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI. Further, greater specificity of properly classified records could compromise national security.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. With time, seemingly irrelevant or untimely information may acquire new significance when new details are brought to light. Additionally, the information may aid in establishing patterns of activity and providing criminal or intelligence leads. It could impede investigative progress if it were necessary to assure relevance, accuracy, timeliness and completeness of all information obtained during the scope of an investigation. Further, some

of the records searched by and/or contained in DIVS may come from other agencies and it would be administratively impossible for the FBI to vouch for the compliance of these agencies with this provision.

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the FBI and may alert the subjects of law enforcement investigations, who might be otherwise unaware, to the fact of those investigations.

(9) From subsections (f) and (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 20, 2010.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer.

[FR Doc. 2010–21247 Filed 8–30–10; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Area in Cape Fear River and Tributaries at Sunny Point Army Terminal, Brunswick County, NC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The U.S. Army requested that the U.S. Army Corps of Engineers (Corps) revise the regulation for the restricted area in the Cape Fear River and its tributaries at Sunny Point Army Terminal, Brunswick County, North Carolina, by renaming the marker buoys and specifying the latitude and longitude for those buoys. There are no other changes proposed for this restricted area regulation. The purpose of the proposed rule is to correct the buoys designating the boundary of the restricted area which provide security for the facility, and prevent acts of terrorism, sabotage, or other criminal acts against the facility, including vessels loading and offloading at the Sunny Point Army Terminal. In the "Rules and Regulations" section of the **Federal Register**, we are publishing this change to the restricted area regulation as a direct final rule without prior proposal because we view this as a non-controversial adjustment to our restricted area regulations and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this rule and it will go into effect. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by September 30, 2010.

SUPPLEMENTARY INFORMATION: This document concerns the "Restricted Area in Cape Fear River and tributaries at Sunny Point Army Terminal, Brunswick County, NC" rule. For further information, including instructions on how to submit comments, please see the information provided in the direct final rule that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 13, 2010.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010–21746 Filed 8–30–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

United States Marine Corps, Marine Corps Base Quantico, Quantico VA; Restricted Area

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers (Corps) is proposing to amend its regulations to establish a permanent restricted area in the waters of the Potomac River in the vicinity of Marine Corps Base (MCB) Quantico, located in Quantico, Virginia. The establishment of a permanent restricted area is necessary to reflect the current security and safety needs at MCB Quantico, including protection of military assets at the Marine Corps Air Facility (MCAF) Quantico, which include the Presidential Helicopter Squadron. The assets located on MCAF Quantico are considered national assets of strategic value and require the increased protection obtained by restricting all public access to within 500 meters of the MCAF shoreline. The proposed restricted area provides standoff from most small arms weapons, acts as a security buffer, and assists USMC security forces in determining intent amongst heavy boat traffic. Additionally, there is an extreme hazard to small craft and vessels operating in close proximity to the MCAF due to jet and prop wash from heavy jet and rotary wing aircraft operating at low altitudes while conducting takeoff and landing operations. The proposed restricted area protects public safety by denying vessels access to this danger. The restricted area is also required to protect public health by preventing vessels from disturbing a planned environmental remediation area located in the vicinity of MCAF. The restricted area will extend approximately 500 meters from the shoreline of MCB/MCAF Quantico and will include the Chopawamsic Creek channel.

DATES: Written comments must be submitted on or before September 30, 2010.

ADDRESSES: You may submit comments, identified by docket number COE–2010–0032, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2010–0032, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, *Attn:* CECW–CO–R (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2010–0032. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through

regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Mr. Steve Elinsky, Corps of Engineers, Baltimore District, Regulatory Branch, at 410–962–4503.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend its regulations at 33 CFR part 334 to establish a permanent restricted area to reflect the current security and safety needs at MCB Quantico, including protection of military assets at the Marine Corps Air Facility (MCAF) Quantico, which include the Presidential Helicopter Squadron. The assets located on MCAF Quantico are considered national assets of strategic value and require the increased protection obtained by restricting all public access to within 500 meters of the MCAF shoreline. The proposed restricted area provides standoff from most small arms weapons, acts as a security buffer, and assists USMC security forces in determining intent amongst heavy boat traffic. Additionally, there is an extreme hazard to small craft and vessels operating in close proximity to the MCAF due to jet and prop wash from heavy jet and rotary wing aircraft operating at low altitudes while conducting takeoff and landing operations. The proposed restricted area will protect public safety by keeping vessels from this danger. The restricted area is also required to protect public health by preventing vessels from disturbing a planned environmental remediation area located in the vicinity of MCAF. The restricted area will extend approximately 500 meters from the shoreline of MCB/MCAF Quantico and will include the Chopawamsic Creek channel.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the economic impact of the establishment of this danger zone would have practically no impact on the public, result in no anticipated navigational hazard, or cause interference with existing waterway traffic. This proposed rule if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it has been prepared, it may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add section 334.235 to read as follows:

§ 334.235 Potomac River, in the vicinity of Marine Corps Base Quantico, Quantico, Virginia; Restricted Area.

(a) *The area.* All of the navigable waters of the Potomac River extending approximately 500 meters from the mean high water mark on the Eastern shoreline of the Marine Corps Air Facility, bounded by these coordinates (including the Chopawamsic Creek channel, but excluding Chopawamsic Island):

Latitude N 38°29′34.04″ Longitude W 077°18′22.4″ (Point A); thence to
Latitude N 38°29′43.01″ Longitude W 077°18′4.1″ (Point B); thence to
Latitude N 38°29′55.1″ Longitude W 077°17′51.3″ (Point C); thence to
Latitude N 38°30′10.1″ Longitude W 077°17′40.3″ (Point D); thence to
Latitude N 38°30′23.43″ Longitude W 077°17′50.30″ (Point E); then along the western shoreline of Chop Island to
Latitude N 38°30′35.13″ Longitude W 077°17′47.45″ (Point F); thence to
Latitude N 38°30′42.1″ Longitude W 077°17′37.1″ (Point G); thence to
Latitude N 38°30′50.71″ Longitude W 077°17′54.12″ (Point H); then along the shoreline to
Latitude N 38°30′0.058″ Longitude W 077°18′39.26″ (Point I); then across Chopawamsic Channel to
Latitude N 38°29′58.45″ Longitude W 077°18′39.97″ (Point J); thence to
Latitude N 38°29′38.2″ Longitude W 077°18′38.14″ (Point K); and thence to the point of origin.

The United States Marine Corps intends to install marker buoys and warning signs at 500 foot intervals to outline the boundary of the Restricted Area. In addition, lighted, floating, small craft intrusion barriers will be placed across the Chopawamsic Creek channel at the entrance to the channel

from the Potomac and just West of the CSX railroad bridge.

(b) *The regulations.* (1) All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area without the permission of the Commander, MCB Quantico or his/her designated representatives.

(2) The restriction will be in place 24 hours a day, seven days a week.

(3) Licensed commercial fisherman will be authorized controlled access to the restricted area after registering with MCB Quantico officials and following specific access notification procedures. However, no vessels will be allowed in the Chopawamsic Creek channel. Warning signs/buoys will be placed at 500-foot intervals along the boundary to notify individuals of the restricted area and that entry is prohibited. Additionally, floating, lighted, small craft intrusion barriers will be placed across the Chopawamsic Creek channel at the entrance to the channel from the Potomac and just west of the CSX railroad bridge.

(c) *Enforcement.* The restricted area will be enforced by the Commander, MCB Quantico. Enforcement will include 24/7 shoreline observation by security personnel and electronic monitoring systems. USMC boats with law enforcement personnel will randomly patrol the restricted area and provide a response capability. All persons, vessels, or other craft are prohibited from entering, transiting, drifting, dredging, or anchoring within the restricted area without the permission of the Commander, MCB Quantico or his/her designated representative.

Dated: August 23, 2010.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010–21756 Filed 8–30–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Army Restricted Area, Designated Portions of Eagle Bay and Eagle River, Fort Richardson, AK

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to revise its regulations to establish a restricted area to change the navigability status of a portion of Eagle River within the boundaries of Fort Richardson, Alaska as well as an adjacent portion of Eagle Bay in the Knik Arm. More specifically, the restricted area is to include all waters of Eagle River downstream from the Bravo Bridge as well as the portion of Eagle Bay east of a demarcation line to extend from two points of Fort Richardson land along northern and southern shores of the Bay. This amendment would prohibit vessels and persons from entering affected waters of Eagle Bay and Eagle River in order to enhance safety and security. This portion of Eagle River runs through an active military range munitions impact area. This portion of Eagle Bay could be subjected to hazardous levels of noise during certain training exercises; Army control of this area is also necessary to prevent unauthorized access into the impact area. The restricted area is necessary to protect the public from entering an extremely hazardous area.

DATES: Written comments must be submitted by September 30, 2010.

ADDRESSES: You may submit comments, identified by docket number COE–2010–0031, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2010–0031, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2010–0031. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Ms. Serena Sweet, U.S. Army Corps of Engineers, Alaska District, Regulatory Division, at 907–753–2819.

SUPPLEMENTARY INFORMATION: In response to a request from the Department of the Army and pursuant to its authorities in Section 7 of the River and Harbor Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is proposing to amend the restricted area regulations in 33 CFR part 334 to establish a restricted area to the east of a demarcation line bisecting Eagle Bay and extending up Eagle River to Bravo Bridge within Fort Richardson. The restricted area is necessary to protect the public against hazardous noise impacts and to prevent vessels and persons from entering an active military range munitions impact area.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.,* small businesses and small governments). Due to the nature of the waterway and the minimal historic use of this portion of Eagle Bay for travel, recreation or fishing, as well as the availability of an alternate channel within Knik Arm, the Corps expects that the economic impact of this portion of the restricted area would have practically no impact on the public and no anticipated navigational hazard or interference with existing waterway traffic, and accordingly, certifies that this proposed rule will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement, for the establishment of this restricted area, is not required. An environmental assessment (EA) will be prepared after the public notice comment period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty upon the private sector. Therefore, it is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.1305 to read as follows:

§ 334.1305 Eagle River Flats Weapons Training Range Impact Area, Fort Richardson, Alaska; Restricted Area.

(a) *The area.* The danger zone shall encompass all navigable waters of Eagle River, as defined at 33 CFR part 329, beginning at Eagle River Flats Bravo Bridge at latitude 61°18′39.33″ N, longitude 149°41′15.68″ W on Fort Richardson, Alaska extending along the shore downstream to the river's outflow to Eagle Bay in the Knik Arm, as well as those waters of Eagle Bay to the east of a demarcation line drawn from a point of Fort Richardson land located at latitude 61°22′19.195″ N, longitude 149°43′20.730″ W to a point of Fort Richardson land located at latitude 61°19′39.168″ N, longitude 149°46′32.204″ W.

(b) *The regulations.* To ensure public safety, the restricted area shall be closed to all watercraft navigation and persons at all times, except for vessels and individuals engaged in operational and maintenance activities authorized by the Commander, U.S. Army Garrison Alaska.

(c) *Enforcement.* This regulation shall be enforced by the Commander, U.S. Army Garrison Alaska or other such agencies as the Commander may designate.

Dated: August 13, 2010.

Michael G. Ensch,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010–21735 Filed 8–30–10; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[EPA–HQ–OW–2008–0878; FRL–9195–5]

RIN 2040–AD94

National Primary Drinking Water Regulations: Revisions to the Total Coliform Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending by 30 days the public comment period for a proposed National Primary Drinking Water Regulation, the Revisions to the Total Coliform Rule (RTCR), which was published in the **Federal Register** on July 14, 2010. This extended comment period will afford greater opportunity to all interested parties to review and submit comments on the proposal.

DATES: Comments must be received on or before October 13, 2010.

ADDRESSES: Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2008–0878. Comments may also be submitted electronically or through hand delivery/courier by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Sean Conley, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564–1781. For general information, contact the Safe Drinking Water Hotline, Telephone (800) 426–4791 or *e-mail: hotline-sdwa @epa.gov.*

SUPPLEMENTARY INFORMATION: The comment period for the proposed RTCR now ends on October 13, 2010. This is an extension of 30 days beyond the comment period established in the **Federal Register** on July 14, 2010. Anyone seeking to submit comments must follow the procedures specified in the **SUMMARY** section of the proposal as published in the **Federal Register** (75 FR 40926, July 14, 2010). The RTCR applies to all public water systems. The proposed revisions require systems that have an indication of coliform contamination in the distribution system to assess the problem and take corrective action that may reduce cases of illnesses and deaths due to potential fecal contamination and waterborne pathogen exposure. This proposal also establishes criteria for systems to qualify for and stay on reduced monitoring, thereby providing incentives for improved water system operation.

See the proposal as published in the **Federal Register** (75 FR 40926, July 14, 2010) for additional information regarding public health concerns, proposed regulatory requirements, implementation schedules, estimated costs and benefits, implementation tools, and other issues.

Dated: August 25, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–21697 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R01–RCRA–2010–0676; FRL–9193–2]

Adequacy of New Hampshire Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA Region 1 proposes to approve New Hampshire's modification of its approved Municipal Solid Waste Landfill Program. On March 22, 2004, EPA issued final regulations allowing research, development, and demonstration (RD&D) permits to be issued to certain municipal solid waste landfills by approved states. On June 28, 2010 New Hampshire submitted an application to EPA Region 1 seeking Federal approval of its RD&D requirements.

DATES: Comments on this proposed action must be received in writing on or before November 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2010–0676, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Hsieh.juiyu@epa.gov*
- *Fax:* (617) 918–0646, to the attention of Juiyu Hsieh
- *Mail:* Send written comments to Juiyu Hsieh, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–1), EPA New England—Region I, 5 Post Office Square, Suite 100, Boston, MA 02109–3912
- *Hand Delivery or Courier:* Deliver your comments to: Juiyu Hsieh, RCRA Waste Management Section, Office of Site Restoration and Remediation (OSRR 07–1), EPA New England—Region I, 5 Post Office Square, Suite 100, Boston, MA 02109–3912. Such deliveries are only accepted during the Office's normal hours of operation.

For detailed instructions on how to submit comments, please see the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Juiyu Hsieh at (617) 918–1646 or by e-mail at *hsieh.juiyu@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving New Hampshire's Research Development and Demonstration (RD&D) permit program through a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments to this action. Unless we get written adverse comments which oppose this approval during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. 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. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. For additional information, see the direct rule which is located in the Rules section of this **Federal Register**.

Dated: August 16, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England, Region 1.

[FR Doc. 2010–21119 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2010–0502; FRL–9194–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Powersville Site Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Delete the Powersville Site Superfund Site (Site) located in Peach County, Georgia, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Georgia, through the Georgia Environmental Protection Division, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 30, 2010.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–R04–SFUND–2010–0502, by one of the following methods:

- *http://www.regulations.gov.* Follow online instructions for submitting comments.
- *Web site: http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: farrier.brian@epa.gov.*
- *Fax:* (404) 562–8896, *Attention:* Brian Farrier.
- *Mail:* Brian Farrier, Remedial Project Manager, Superfund Remedial Section C, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Hand Delivery: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–R04–SFUND–2010–0502. 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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Record Center, attn: Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, *Phone:* (404) 562–8862, hours 8 a.m.–4 p.m., Monday through Friday by appointment only; or, Thomas Public Library, 315 Martin Luther King, Jr. Drive, Fort Valley, GA 31030, *Phone:* 478–825–1640, hours 9 a.m.–6 p.m., Monday through Thursday, 9 a.m.–1 p.m. Friday, closed Saturday and Sunday.

FOR FURTHER INFORMATION CONTACT: Brian Farrier, Remedial Project Manager, Superfund Remedial Section C, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Farrier can be reached via electronic mail at *farrier.brian@epa.gov*.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of Powersville Site Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, *see* the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register.**

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 3, 2010

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–21441 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6 and 19

[FAR Case 2009–038, Docket 2010–0095; Sequence 1]

Federal Acquisition Regulation; Tribal Consultation; Justification and Approval of Sole-Source 8(a) Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of tribal consultation and outreach meetings and request for comments.

SUMMARY: The Federal Acquisition Regulatory Council (FAR Council) will hold tribal consultation and outreach meetings to discuss rulemaking associated with section 811 of the National Defense Authorization Act (NDAA) for FY 2010, Public Law 111–84. Section 811 addresses requirements for the justification and approval of sole-source contracts over $20 million under the 8(a) small business development program. Presentations made during the meetings will be taken into consideration by the FAR Council as it develops changes to the Federal Acquisition Regulation (FAR) to implement section 811.

DATES: The meetings will be held during the month of October in Washington, DC, Albuquerque, NM, and Fairbanks, AK. For more detailed information about the consultation registration procedures, dates, location, times, and agendas, please see *http://www.acq.osd.mil/dpap/dars/section811.html.*

FOR FURTHER INFORMATION CONTACT: For questions about registration, the submission of comments, or for clarification of the subject matter of the consultation and outreach, submit them to the e-mail address identified at *http://www.acq.osd.mil/dpap/dars/section811.html.* Please put "Consultation Questions" in the subject line of the e-mail.

SUPPLEMENTARY INFORMATION:

A. Additional Information

Procedures for the consultation and outreach: The FAR Council respectfully requests that any elected or appointed representatives of the tribal communities that are interested in attending the consultation and outreach meeting preregister and indicate whether they would like to make a presentation during the meeting. Registration is on a first-come first-served basis. To pre-register, please go to *http://www.acq.osd.mil/dpap/dars/section811.html* and send an e-mail to the address identified on the site with your name, organization affiliation, address, telephone number, e-mail address, and fax number, and indicate which consultation and outreach session you are interested in attending. Please put "Consultation Registration" in the subject line of the e-mail.

Formal oral presentations: The purpose of these consultations and outreach is to encourage meaningful dialogue with tribal officials regarding the development of federal acquisition policy when implementing section 811 of the NDAA 2010. In addition, participants interested in making formal oral presentations during the meeting should provide the following information by the preregistration deadline stated on *http://www.acq.osd.mil/dpap/dars/section811.html:* Name, organization affiliation, address, telephone number, e-mail address, and fax number. Based on the number of registrants requesting time for presentations, the FAR Council may ask participants to limit the length of their formal presentations so that all attendees wishing to speak have the opportunity to be heard and there is adequate time for discussion.

Written comments: The FAR Council welcomes written statements from attendees making formal oral presentations, other attendees, and members of the tribal communities who

are unable to attend the meeting but wish to share their views on the development of regulations to implement section 811. Written comments may be submitted to the e-mail address identified at *http://www.acq.osd.mil/dpap/dars/section811.html.* Please provide your name, organization affiliation, address, telephone number, e-mail address, and fax number. Please put "Consultation Comments" in the subject line of the e-mail. Parties wishing to have their written comments shared at the meeting should ensure comments are received by the deadlines stated on Web site.

Meeting accommodations: The meeting is physically accessible to persons with disabilities. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Special Assistance Contact via the telephone number or e-mail address listed on *http://www.acq.osd.mil/dpap/dars/section811.html.*

B. Background

Section 811 of the FY 2010 NDAA establishes a new requirement for Federal agencies to justify a sole-source contract award to a business under the Small Business Administration's 8(a) business development program, including businesses owned by Indian Tribes and Alaska Native Corporations, if the sole-source award is to exceed $20 million. The 8(a) program enables contract awards to be made to socially and economically disadvantaged small business concerns using the Small Business Administration (SBA) as the prime contractor to the requiring agency.

Section 811 states that a sole-source justification must include the following information: (1) A description of the needs of the agency concerned for the matters covered by the contract, (2) a specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract, (3) a determination that the use of a sole-source contract is in the best interest of the agency concerned, (4) a determination that the anticipated cost of the contract will be fair and reasonable, and (5) such other matters as the head of the agency concerned shall specify. Before an award can be made, the justification must be approved by an appropriate official, as specified in statute. Section 811 does not require a justification and approval (J&A) if the contract award is equal to or less than $20 million. Similar to the handling of J&As for other sole-source awards, J&As prepared pursuant to section 811 must be made public within 14 days after contract award is made. Finally, section 811 requires that the FAR—the government-wide regulation governing the Federal acquisition process—be revised to reflect its revisions.

The FAR Council is responsible for overseeing the development and maintenance of the FAR, including changes to implement section 811. Its members include the Administrator for Federal Procurement Policy, who serves as the chair of the Council and is a senior official in the Office of Management and Budget, and senior acquisition officials from the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration.

The FAR Council believes the conduct of tribal consultation and outreach in connection with section 811 will be a valuable component of its deliberations in preparing to implement this law, which includes contracting with Indian Tribes and Alaska Native Corporations. As explained in E.O. 13175, Tribal consultation is a critical component of a sound and productive Federal-Tribal relationship. The President's Memorandum of November 5, 2009 underscores this Administration's commitment to regular and meaningful consultation with tribal officials in policy decisions that have tribal implications. The FAR Council seeks tribal consultation and outreach in connection with section 811 to allow for constructive dialogue and an opportunity for the FAR Council to hear the views of the tribal community, Tribal Leaders, Elders and elected members of Alaska Native Villages or their appointed representatives on how this law may affect the ability of Indian Tribes and Alaska Native Corporations to receive Federal contracts under the 8(a) Program. Officials from the Small Business Administration will also participate in the consultation and outreach.

Attendees who plan to make oral presentations during the meeting are also encouraged to provide a written copy of their statements and any supplementary material they believe is relevant and will assist the FAR Council in its deliberations. Electronic or digitized copies are especially welcomed. FAR Council members or other officials representing the FAR Council may ask questions of individuals making formal oral presentations during the meeting to clarify or further explain their statements. The FAR Council will analyze the presentations, both oral and written, along with any written comments received. Following consultation and outreach and analysis of comments from the tribal community, the FAR Council will prepare a rule for review by the Office of Management and Budget pursuant to Executive Order 12866, *Regulatory Planning and Review.* Members of the public at large, as well as tribal officials, will have the opportunity to provide written comments on FAR changes to implement section 811, which will be considered by the FAR Council, before a final rule is promulgated.

Dated: August 26, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–21743 Filed 8–30–10; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register

Vol. 75, No. 168

Tuesday, August 31, 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

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2011 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces a fee of $150 to be charged for the 2011 tariff-rate quota (TRQ) year for each license issued to a person or firm by the U.S. Department of Agriculture (USDA) authorizing the importation of certain dairy articles, which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule (HTS) of the United States.

DATES: Effective August 31, 2010.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Dairy Import Licensing Program, Import Policies and Export Reporting Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250–1021; or by telephone at (202) 720–9439; or by e-mail at: *abdelsalam.el-farra@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by USDA and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of such licenses is monitored by the Dairy Import Licensing Program, Import Policies and Export Reporting Division, Foreign Agricultural Service, USDA, and the U.S. Customs and Border Protection, U.S. Department of Homeland Security.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to defray USDA's costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2011 calendar year.

Notice: The total cost to USDA of administering the licensing system for 2011 has been estimated to be $333,000, and the estimated number of licenses expected to be issued is 2,300. Of the total cost, $280,000 represents staff and supervisory costs directly related to administering the licensing system, and $53,000 represents other miscellaneous costs, including travel, postage, publications, forms, and Automated Data Processing system support.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2011 calendar year, in accordance with 7 CFR 6.33, will be $150 per license.

Issued at Washington, DC, August 11, 2010.

Ronald Lord,

Licensing Authority.

[FR Doc. 2010–21607 Filed 8–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 20, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–022. Applicant: Virginia Commonwealth University, School of Medicine, Department of Physiology & Biophysics, 1101 East Marshall Street, P.O. Box 980551, Richmond, VA 23298–0551. Instrument: Electron Microscope. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument will be used to investigate the three dimensional structure of biological macromolecules, which will be observed under cryogenic conditions. Justification for Duty–Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 3, 2010.

Dated: August 24, 2010.

Gregory W. Campbell,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–21559 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY39

Marine Mammals; File No. 15271

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that James T. Harvey, Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, California 95039, has applied in due form for a permit to conduct research on blue (*Balaenoptera musculus*), fin (*B. physalus*), humpback

(*Megaptera novaeangliae*), and gray (*Eschrichtius robustus*) whales.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 30, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 15271 from the list of available applications.

These documents are also available 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;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a five-year permit to conduct research on large whale species off California, Oregon, and Washington; the primary research area would be off the Southern California Bight, San Luis Obispo, Monterey Bay, and San Francisco. The purposes of the research are to: (1) relate distribution and abundance of marine mammals with environmental factors; (2) determine diet and foraging behaviors as marine mammals exploit prey resources; (3) determine types of acoustic behavior of marine mammals (primarily cetaceans) and how acoustic signals are affected by anthropogenic factors; and (4) determine the movements of individuals or pods during migrations or within their home range. Each year, 50 blue whales would be approached for photo-identification (photo-ID) and biopsy, of which 30 would be suction-cup tagged, 10 would be dart-tagged, and 10 would be tagged with small implantable tags; 30 fin whales would be approached for photo-ID and biopsy, of which 10 would be suction-cup tagged, 5 would be dart-tagged, and 5 would be tagged with small implantable tags; 200 humpback whales would be approached for photo-ID and biopsy, of which 30 would be suction-cup tagged, 10 would be dart-tagged, and 10 would be tagged with small implantable tags; 100 gray whales would be approached for photo-ID and biopsy, of which 40 would be suction-cup tagged, 10 would be dart-tagged, and 10 would be tagged with small implantable tags. Tagged individuals would be observed and photographed (e.g., daily for the first week and every week or so for the next two months). Up to 200 California sea lions (*Zalophus californianus*), 20 harbor seals (*Phoca vitulina richardii*), 50 Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), 20 Northern right whale dolphins (*Lissodelphis borealis*), 10 harbor porpoise (*Phocoena phocoena*) and 20 short-beaked common dolphins (*Delphinus delphis*) would be harassed incidental to research activities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a draft environmental assessment (EA) has been prepared to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 25, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–21715 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY36

Endangered and Threatened Species; Initiation of 5–Year Review of the Eastern Distinct Population Segment of the Steller Sea Lion

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

ACTION: Notice; reopening of comment period.

SUMMARY: NMFS published a notice in the **Federal Register** on June 29, 2010, announcing the initiation of a 5–year review of the eastern Distinct Population Segment (DPS) of the Steller Sea Lion (*Eumetopias jubatus*) under the Endangered Species Act of 1973, as amended (ESA) and requesting information related to that review. A notice correcting the email address and fax number to which comments and information should be sent was published July 7, 2010. Written comments were due by August 30, 2010. NMFS has decided to reopen the public comment period for an additional 45 days, to October 14, 2010.

DATES: The public comment period for this action has been reopened for an additional 45 days, to October 14, 2010. Written comments and information must be received no later than October 14, 2010.

ADDRESSES: You may submit information by any of the following methods:

- Mail: Kaja Brix, National Marine Fisheries Service, Alaska Region, Protected Resources Division, P.O. Box 21668, 709 West 9th Street, Juneau, AK 99802.
- E-mail: *ssldps@noaa.gov*. Include the following identifier in the subject line of the e-mail: "Comments on the 5–year review for the eastern DPS of Steller sea lion."
- Fax: (907) 586–7557, attention: Kaja Brix.

Information received in response to this notice and review will be available for public inspection (by appointment,

during normal business hours) at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Lisa Rotterman (907) 271–1692, *lisa.rotterman@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a notice in the **Federal Register** on June 29, 2010, announcing the initiation of a 5–year review of the eastern Distinct Population Segment (DPS) of the Steller Sea Lion (*Eumetopias jubatus*) under the Endangered Species Act of 1973, as amended (ESA) and requesting information related to that review (75 FR 37385). A notice correcting the email address and fax number to which comments and information should be sent was published July 7, 2010 (75 FR 38979). Written comments were due by August 30, 2010. NMFS has decided to reopen the public comment period for an additional 45 days, to October 14, 2010.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 25, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–21708 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY53

Federal Aquatic Nuisance Species Research Risk Analysis Protocol

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

ACTION: Notice of availability of draft revised research protocol; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of the draft revised Federal Aquatic Nuisance Species Research Risk Analysis Protocol (Protocol), developed by the Research Protocol Committee, a committee of the Aquatic Nuisance Species Task Force (ANSTF). The Protocol is available for public review and comment.

DATES: Comments must be received within 45 days after August 31, 2010.

ADDRESSES: Electronic copies of the draft revised Protocol are available on the ANSTF website, *http://anstaskforce.gov/documents.php*. To obtain a hard copy of the draft revised Protocol or to submit comments, see Document Availability and Public Comment, respectively, under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Margaret M. (Peg) Brady, NOAA Policy Liaison to the Aquatic Nuisance Species Task Force. 1315 East West Highway, SSMC 3, Rm. 15531 Silver Spring, MD 20910 Phone: 301–713–0174; Email: *Peg.Brady@noaa.gov*

SUPPLEMENTARY INFORMATION:

Introduction

The Aquatic Nuisance Species Task Force (ANSTF) is an intergovernmental organization dedicated to preventing and controlling aquatic nuisance species, and implementing the Nonindigenous Aquatic Nuisance Prevention and Control Act. The National Oceanic and Atmospheric Administration and U. S. Fish and Wildlife Service serve as co-chairs of the ANSTF. The ANSTF developed a research protocol as is required by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA, Public Law 101–646, 104 STAT. 4671, 16 U.S.C. 4701–4741), as amended by the National Invasive Species Act, 1996. Section 1202(f)(2) of NANPCA directs the ANSTF to establish a protocol "to ensure that research activities carried out under [NANPCA] do not result in the introduction of aquatic nuisance species to waters of the United States."

Responsibility for actual use of this Protocol is specified in section (f)(3) of the NANPCA: "The Task Force shall allocate funds authorized under this Act for competitive research grants to study all aspects of aquatic nuisance species, which shall be administered through the National Sea Grant College Program and the Cooperative Fishery and Wildlife Research Units. Grants shall be conditioned to ensure that any recipient of funds follows the protocol established under paragraph (2) of this subsection."

Throughout this document both the descriptors "nonindigenous" and/or "nuisance" are used when referring to aquatic species that are the target of this risk analysis. Language used in the NANPCA differentiates between a nonindigenous species and a nuisance species, with a "nonindigenous" label being solely based on the historic range of the species, while a "nuisance" designation is based on a species being both nonindigenous and potentially harmful ("threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters"). The ANSTF Research Committee adopted a precautionary approach by targeting this risk analysis to all aquatic nonindigenous species research, regardless of the "nuisance" designation. The intent of the procedures outlined herein is to minimize to the extent practicable the risk of release and spread of aquatic nonindigenous species into areas they do not yet inhabit, since any nonindigenous species may become a nuisance species. Not only is it often not possible to be sure that a species won't become a nuisance (as defined) in the future, the possession and/or release of nonindigenous species may be illegal under various Federal, State, or local laws, which may or may not differentiate between nonindigenous and nuisance species.

Background

When finalized, this document ("the Protocol") would replace the previously established "Protocol for Evaluating Research Proposals Concerning Aquatic Nonindigenous Species," adopted in draft form in 1992 and finalized and published by the ANSTF in July 1994. The 1994 protocol applies only to research involving aquatic nonindigenous species (ANS) and is designed to reduce the risk that research activities may cause introduction or spread of such aquatic species. Other potential means of introduction, such as bait movement, aquaria disposal, ballast water discharge, movement of recreational boats, movement of fishing gear, and horticultural sales, are not addressed in the 1994 protocol.

In 2008 the ANSTF requested the Research Committee (a Committee of the ANSTF) to evaluate and recommend revisions to the 1994 protocol, as needed. According to the Society for Risk Analysis (SRA, *http://www.sra.org*), the elements or components of a risk analysis include risk assessment, risk characterization, risk communication, risk management, and policy relating to risk. This revised Protocol incorporates three of those elements it requires a risk assessment (Part I) and then, if needed, establishment and implementation of a risk management plan (Part II), with the combined results communicated to the funding agency as part of the proposal and funding process. Therefore, this revised Protocol is renamed "Federal Aquatic Nuisance Species Research Risk Analysis Protocol." The draft was approved by the ANSTF on November

5, 2009; distribution of the document for public comment is the final step for the ANSTF to adopt the Protocol.

This Protocol supplements, but does not replace, other existing Federal guidelines established to control activities with specific major classes of organisms. This document does not eliminate or in any way affect other applicable legal requirements, including the National Environmental Policy Act [NEPA, 1970 (42 U.S.C. 4321 *et seq.*)].

The Protocol encourages the incorporation of a Hazard Analysis and Critical Control Point (HACCP) approach for prevention planning within research activities. Information about the use of HACCP is available at *http://www.seagrant.umn.edu/ais/haccp*. A web site detailing the application of HACCP to natural resource pathways, plus a link to download a HACCP wizard that helps create HACCP plans, can be found at http://www.haccp-nrm.org.

Document Availability

You may obtain copies of the Protocol by any one of the following methods:

- Internet: *http://anstaskforce.gov/documents.php*
- Write: Susan Pasko, National Oceanic and Atmospheric Administration. 1315 East West Highway, SSMC 3, Rm. 15531 Silver Spring, MD 20910; Telephone: (301) 713–0174 x 165; Email: *Susan.Pasko@noaa.gov*

Request for Comments

Comments on the draft Protocol are invited. The ANSTF will review all submitted comments and make revisions, as appropriate, to the Protocol before going final. You may submit a written comment by any one of the following methods:

- Email: Susan.Pasko@noaa.gov
- Mail or hand-delivery: Susan Pasko, National Oceanic and Atmospheric Administration. 1315 East West Highway, SSMC 3, Rm. 15531 Silver Spring, MD 20910
- Fax: (301) 713–1594

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 24, 2010.

Patricia A. Montanio,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2010–21712 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to defer the initiation of administrative review for one antidumping duty order.

DATES: *Effective Date:* August 31, 2010

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received a request to defer for one year the initiation of the July 1, 2009 through June 30, 2010 administrative review of the antidumping duty order on Certain Pasta from Italy with respect to one exporter in accordance with 19 CFR 351.213(c). The Department received no objections to this request from any party cited in 19 CFR 351.213(c)(1)(ii).

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 initiation notice had no exports, sales, or entries during the POR, it should notify the Department within 60 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 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 *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 administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify 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://www.trade.gov/ia* on the date of publication of this **Federal Register.** In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a 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 the proceeding [1] should 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,[2] 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://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2011.

	Period to be reviewed
Antidumping Duty Proceedings	
India: Polyethylene Terephthalate (PET) Film, A–533–824	7/1/09–6/30/10
Ester Industries Limited	
SRF Limited	
Italy: Certain Pasta, A–475–818	7/1/09–6/30/10
Agritalia S.r.L.	
Domenico Paone fu Erasmo S.p.A.	
Industria Alimentare Colavita, S.p.A.	
Labor S.r.L.	
Molino e Pastificio Tomasello, S.p.A.	
PAM. S.p.A. and its affiliate, Liguori Pastificio dal 1820 SpA	
P.A.P. SNC Di Pazienza G.B. & C.	
Premiato Pastificio Afeltra S.r.L.	
Pasta Zara SpA	
Pastificio Di Martino Gaetano & F.lli SpA	
Pastificio Fabianelli S.p.A.	
Pastificio Felicetti SrL	
Pastificio Lucio Garofalo S.p.A.	
Pastificio Riscossa F.lli Mastromauro S.p.A.	
Rummo S.p.A. Molino e Pastificio	
Rustichella d'Abruzzo S.p.A.	
Mexico:	
Purified Carboxymethylcellulose, A–201–834, Quimica Amtex, S.A. de C.V	7/1/09–6/30/10
Stainless Steel Sheet and Strip in Coils, A–201–822, ThyssenKrupp Mexinox S.A. de C.V	7/1/09–6/30/10
Russian Federation: Solid Urea, A–821–801, OJSC MCC EuroChem, and production affiliates, OJSC Nevinnomyssky Azot and OJSC Novomoskovskaya Azot	7/1/09–6/30/10
Taiwan: Polyethylene Terephthalate Film, Sheet and Strip, A–583–837	7/1/09–6/30/10
Nan Ya Plastics Corporation, Ltd.	
Shinkong Materials Technology Co., Ltd.	
SRF Limited	

[1] 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 proceedings (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] 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 Application.

	Period to be reviewed
The Netherlands: Purified Carboxymethylcellulose, A–421–811, Akzo Nobel Functional Chemicals, B.V	7/1/09–6/30/10
The People's Republic of China:	
Circular Welded Carbon Quality Steel Pipe,[3] A–570–910	7/1/09–6/30/10
Baoshan Iron & Steel Co., Ltd.	
Jiangsu Yulong Steel Pipe Co., Ltd.	
Liaoning Northern Steel Pipe Co., Ltd.	
Hunan Hengyang Steel Tube (Group) Co., Ltd.	
CNOOC Kingland Pipeline Co., Ltd.	
Jiangsu Changbao Steel Tube Co., Ltd.	
Wuxi Fastube Industry Co., Ltd.	
Weifang East Steel Pipe Co., Ltd.	
Tianjin Shuangjie Steel Pipe Co., Ltd.	
Zhejiang Kingland Pipeline Industry Co., Ltd.	
SteelFORCE Far East Ltd.	
Tianjin Baolai International Trade Co., Ltd.	
Shanghai Zhongyou TIPO Steel Pipe Co., Ltd.	
Benxi Northern Steel Pipes, Co. Ltd.	
Shanghai Zhongyou Tipo Steel	
Huludao City Steel Pipe Industrial	
Hebei Zhongyuan Steel Pipe Manufacturer	
Tianjin Longshenghua Import & Export	
Persulfates,[4] A–570–847, FMC Corporation	7/1/09–6/30/10
Tapered Roller Bearings and Parts Thereof, A–570–601 Finished and Unfinished, Tianshui Hailin Import and Export Corporation[5]	6/1/09–5/31/10
Turkey: Certain Pasta, A–489–805, Marsan Gida Sanayi ve Ticaret A.S. (successor-in-interest to Gidasa Sabanci gida Sanayi ve Ticaret)	7/1/09–6/30/10
Countervailing Duty Proceedings	
India: Polyethylene Terephthalate (PET) Film, C–533–825	1/1/09–12/31/09
Ester Industries Limited	
SRF Limited	
Italy: Certain Pasta, C–475–819	1/1/09–12/31/09
F.lli De Cecco di Filippo Fara San Martino S.p.A.	
Molino e Pastificio Tomasello, S.p.A.	
Pastificio Antonio Pallante S.r.L.	
Pastificio Fabianelli S.p.A.	
The People's Republic of China: Circular Welded Carbon Quality Steel Pipe, C–570–911	1/1/09–12/31/09
Baoshan Iron & Steel Co., Ltd.	
Jiangsu Yulong Steel Pipe Co., Ltd.	
Liaoning Northern Steel Pipe Co., Ltd.	
Hunan Hengyang Steel Tube (Group) Co., Ltd.	
CNOOC Kingland Pipeline Co., Ltd.	
Jiangsu Changbao Steel Tube Co., Ltd.	
Wuxi Fastube Industry Co., Ltd.	
Weifang East Steel Pipe Co., Ltd.	
Tianjin Shuangjie Steel Pipe Co., Ltd.	
Zhejiang Kingland Pipeline Industry Co., Ltd.	
Benxi Northern Steel Pipes, Co. Ltd.	
Shanghai Zhongyou Tipo Steel	
Huludao City Steel Pipe Industrial	
Hebei Zhongyuan Steel Pipe Manufacturer	
Suspension Agreements	
None.	
Deferral of Initiation of Administrative Review	
Italy: Certain Pasta, A–475–818, Pastificio Attilio Mastromauro-Pasta Granoro S.r.L	7/1/09–6/30/10

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China ("PRC") who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of Persulfates 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 entity of which the named exporters are a part.

[5] In the initiation notice that published on July 28, 2010 (75 FR 44224), we initiated a review of Tapered Roller Bearings ("TRB's") from the PRC (A–570–601) for the company Tianshui Hailin Import and Export Corporation. On November 14, 2002 (67 FR 68990), we published a revocation of the order with respect to TRB's exported by Tianshui Hailin Import and Export Corporation and produced by Hailin Bearing Factory. This is to clarify that this administrative review covers TRB's exported by Tianshui Hailin Import and Export Corporation that were produced by any manufacturer other than Hailin Bearing Factory.

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 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.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from ware house, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

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 *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this 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).

Dated: August 25, 2010.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–21702 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 100325170–0222–01]

Notice of Intent To Terminate Selected National Voluntary Laboratory Accreditation Program (NVLAP) Services

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology announces its intention to terminate the Commercial Products Testing Laboratory Accreditation Program offered by NVLAP. The Commercial Products Testing Laboratory Accreditation Program includes the following areas of testing: paints and related coatings, paper and related products, building seals and sealants, plastics, plumbing, roofing, and mattresses.

DATES: The Commercial Products Testing Laboratory Accreditation Program will be terminated effective September 30, 2010.

ADDRESSES: Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140; *e-mail to: nvlap@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Sally Bruce, Chief, National Voluntary Laboratory Accreditation Program, (301) 975–4016; *e-mail: nvlap@nist.gov.*

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology administers the National Voluntary Laboratory Accreditation Program (NVLAP) under regulations found in Part 285 of Title 15 of the Code of Federal Regulations. NVLAP provides an unbiased third-party evaluation and recognition of laboratory performance, as well as expert technical assistance to upgrade that performance, by accrediting calibration and testing laboratories found competent to perform specific calibrations or tests.

NVLAP is comprised of a set of Laboratory Accreditation Programs (LAPs) that are established on the basis of requests and demonstrated need. Each LAP includes specific test and/or calibration standards and related methods and protocols assembled to satisfy the unique needs for accreditation in the field of testing or calibration.

Under the NVLAP Procedures found at 15 CFR part 285, the Chief of NVLAP may terminate a specific Laboratory Accreditation Program (LAP) when he/she determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. Pursuant to 15 CFR part 285, the Chief of NVLAP has determined that a need no longer exists to accredit laboratories for the services covered under the Commercial Products Testing LAP and that the Commercial Products Testing LAP will be terminated.

The Commercial Products Testing LAP includes the following areas of testing: paints and related coatings, paper and related products, building seals and sealants, plastics, plumbing, roofing, and mattresses. The purpose of this program is to supply unbiased third-party evaluation and attestation of testing competence of manufacturer and independent testing laboratories in the given fields.

A review of the Commercial Products Testing LAP revealed that there are four (4) laboratories enrolled in the plumbing area. Two of the plumbing laboratories are also accredited for plastic and paint testing in support of plumbing testing. Three of the four plumbing laboratories carry redundant accreditation by the International Accreditation Service (IAS), an accreditation body recognized by the International Laboratory Accreditation Cooperation (ILAC), for plumbing testing, and for plastic and paint testing for the two laboratories also accredited in those fields. Terminating the Commercial Products Testing LAP will allow those three laboratories to eliminate the duplicate accreditations, saving each between $4,000 and $8,000 per year in fees. All other areas of testing within the Commercial Products Testing LAP are covered by nongovernmental ILAC-recognized accrediting bodies within the United States.

As a result of this review, the Chief of NVLAP has decided to terminate this LAP because there is no longer a need to accredit laboratories for the services covered under the scope of this LAP.

Effective on September 30, 2010, NVLAP will no longer grant or renew accreditations under the terminated program. A laboratory currently accredited under the LAP will remain accredited until the expiration of its current accreditation unless earlier termination is requested by the laboratory.

E.O. 12866: This action has been determined to be not significant under Executive Order 12866.

Dated: August 25, 2010.

Harry S. Hertz,

Director, Baldrige National Quality Program.

[FR Doc. 2010–21698 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Workshop on Polymers for Photovoltaic Systems

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: The National Institute of Standards and Technology announces a

Workshop on Polymers for Photovoltaic Systems.

DATES: The workshop will be held over two days, Thursday, September 23, 8:30 a.m. to 5 p.m.; Friday, September 24, 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at NIST's Gaithersburg campus, 100 Bureau Drive, Employee Lounge, Building 101, Gaithersburg, MD 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Joannie Chin, Polymeric Materials Group, National Institute of Standards and Technology, Gaithersburg MD, (301) 975–6815, *joannie.chin@nist.gov.*

SUPPLEMENTARY INFORMATION: All attendees must contact Joannie Chin, *joannie.chin@nist.gov*, (301) 975–6815, by September 9 to pre-register and have appropriate government-issued photo ID to gain entry to NIST. Agenda items for the meeting include: presentations on polymeric materials used in photovoltaic systems; testing, performance, and reliability of polymers in photovoltaic systems; impact of polymers on safety standards and codes; breakout sessions to obtain stakeholder perspectives on the above mentioned topics; presentation of a NIST-developed accelerated aging and service life prediction methodology to polymers used in photovoltaic systems.

Dated: August 26, 2010.

Harry S. Hertz,

Director, Baldrige National Quality Program.

[FR Doc. 2010–21700 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY58

Endangered Species; File No. 14759

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Joseph Hightower, Ph.D., North Carolina Cooperative Fish and Wildlife Research Unit, North Carolina State University, Raleigh, NC 27695, has been issued a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and
- Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 12, 2010, notice was published in the **Federal Register** (75 FR 11862) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant is authorized to conduct a five-year scientific study determining the presence, abundance and distribution of shortnose sturgeon in North Carolina rivers (Chowan, Roanoke, and Cape Fear) and estuaries (Albemarle Sound). The permit authorizes non-lethal sampling with anchored gill nets, capturing up to 15 shortnose sturgeon annually from the Chowan and Cape Fear River Basins and Albemarle Sound. Similar activities capturing up to 25 shortnose sturgeon from the Roanoke River Basin will also be conducted each year. A sub-set of up to five adults or sub-adults from each river and Albemarle Sound will be anesthetized and implanted with internal sonic transmitters annually. Each will be captured, measured, weighed, sampled for genetic tissue analysis, and PIT tagged. Tracking sturgeon at fixed receiver stations will take place providing information about movement, seasonal distribution and habitat use.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 25, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–21709 Filed 8–30–10; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Procedures for Export of Noncomplying Goods

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is announcing that a proposed collection of information has been submitted to the Office of Management and Budget ("OMB") for review and clearance under the Paperwork Reduction Act of 1995 ("PRA").

DATES: Fax written comments on the collection of information by September 30, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* CPSC Desk Officer, *FAX:* 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.* Written comments should be captioned "Export of Noncomplying Goods." All comments should be identified with the OMB Control Number 3041–0003. In addition, written comments should also be submitted by mail/hand delivery/courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814. 301–504–7671. *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the CPSC has submitted the following proposed collection of information to OMB for review and clearance.

Procedures for Export on Noncomplying Goods—(OMB Control Number 3041–0003–Extention). The

Commission requested comments on a proposed three year extension of approval of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying, misbranded, or banned products. These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act, as amended by the Consumer Product Safety Improvement Act of 2008. Persons and firms are required to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required to transmit the information relating to the proposed exportation to the government of the country of intended destination. In addition, for any consumer product that is not in conformity with an applicable consumer product safety rule, exports from the United States may be prohibited unless the importing country has notified the Commission that such country accepts the importation of such consumer product. 15 U.S.C. 2067.

In the **Federal Register** of May 18, 2010 (75 FR 27732), the CPSC published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows. Based on a review of the number of export requests received by the CPSC during the last three years, the CPSC staff estimates that approximately 44 notifications will be received from an estimated 20 firms per year. The staff further estimates that the average time for each response is one hour, for a total of 44 hours of annual burden. The annualized cost to respondents would be approximately $2,505. (44 hours at $56.93 per hour based on total compensation of all management, professional, and related occupations in goods-producing industries in the United States, September 2009, Bureau of Labor Statistics.)

The estimated annual cost of the information collection requirements to the Federal government is approximately $14,000. The staff estimates that it takes about three hours to process an export notification and enter the information in the appropriate database. The receipt and processing of 44 notifications would require approximately 132 staff hours or approximately 1 staff month per year.

Dated: August 25, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–21644 Filed 8–30–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: U.S. Department of Education, President's Board of Advisors on Historically Black Colleges and Universities (Board).

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. The notice also describes the functions of the Board. Notice of the meeting is required by section 10 (a) (2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: Wednesday, September 15, 2010. *Time:* 9:15 a.m.–2:00 p.m.

ADDRESSES: The Board will meet at the Sheraton National Hotel in Arlington, Virginia, Galaxy Ballroom, 16th Floor, 900 South Orme Street, Arlington, Virginia 22204, (703) 521–1900.

FOR FURTHER INFORMATION CONTACT: John Silvanus Wilson, Jr., Executive Director, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue, SW., Washington, DC 20204; *telephone:* (202) 453–5634, fax: (202) 453–5632.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities (the Board) is established by Executive Order 13532 (February 26, 2010). The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and encouraging public-private investments in HBCUs; and (v) encouraging public-private investments in HBCUs.

Agenda

The Board will receive an overview of the fiscal health of historically black colleges and universities and discuss possible strategies for the Board to meet its duties under its charter.

Additional Information

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify John P. Brown at (202) 453–5645, no later than Friday, September 10, 2010. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Wednesday, September 15, 2010, from 1:30 p.m.–2:00 p.m. Individuals who wish to provide comments will be allowed three to five minutes to speak. Those members of the public interested in submitting written comments may do so by submitting them to the attention of John S. Wilson, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 by Friday, September 10, 2010.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 Monday through Friday (excluding Federal holidays) during the hours of 9:00 a.m. to 5:00 p.m.

Electronic Access to the Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the

U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC area at 202–512–0000.

Dated: August 25, 2010.

Martha J. Kanter,

Under Secretary, U.S. Department of Education.

[FR Doc. 2010–21610 Filed 8–30–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences

AGENCY: Department of Education, Institute of Education Sciences.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the National Board for Education Sciences. The notice also describes the functions of the Committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the meeting.

DATES: September 29, 2010.

Time: 8:15 a.m. to 5 p.m. The meeting will be in recess between the hours of 1 p.m. and 3:15 p.m.

ADDRESSES: 80 F Street, NW., Room 100, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Norma Garza, Executive Director, National Board for Education Sciences, 555 New Jersey Ave., NW., Room 602K, Washington, DC 20208; phone: (202) 219–2195; fax: (202) 219–1466; e-mail: *Norma.Garza@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistance listening devices, or materials in alternative format) should notify Norma Garza no later than September 20. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002 (ESRA). The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute. At this time, the Board consists of ten of fifteen appointed members due to the expirations of the terms of former members. The Board shall meet and can carry out official business because the ESRA states that a majority of the voting members serving at the time of a meeting constitutes a quorum.

On September 29 starting at 8:15 a.m. the Board will approve the agenda and hear remarks from the Chair and the Executive Director. From 8:30 a.m. to 9:15 a.m., IES Director John Easton will propose priorities for the Institute, followed by a Board discussion until 10 a.m. After a break ending at 10:15 a.m., the Board will hear reports from ex-officio members who represent other agencies. Presentations will follow on the What Works Clearinghouse from 11 a.m. to noon, and on the Evaluation of Charter School Impacts from noon to 1 p.m. The meeting will be in recess from 1 p.m. to 3:15 p.m. to allow members to participate in a swearing-in ceremony in the office of the Secretary of Education. The ceremony will not be open to the public. The meeting will reconvene at 3:15 p.m. in the IES Board Room for presentations and updates from the IES Commissioners and staff. The meeting will adjourn at 5 p.m.

A final agenda will be available from Norma Garza (see contact information above) on September 20 and will be posted on the Board Web site *http://ies.ed.gov/director/board/agendas/index.asp.*

Records are kept of all Committee proceedings and are available for public inspection at 555 New Jersey Ave., NW., Room 602K, Washington, DC 20208, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fed-register/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC area at (202) 512–0000.

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: August 24, 2010.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2010–21602 Filed 8–30–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 29, 2010—1 p.m.–7 p.m.

ADDRESSES: Sagebrush Inn and Conference Center, 1508 Paseo Del Pueblo Sur, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1 p.m.—Call to Order by Co-Deputy Designated Federal Officers (DDFO), Ed Worth and Lee Bishop
- Establishment of a Quorum: Roll Call and Excused Absences, Lorelei Novak
- Welcome and Introductions, Ralph Phelps
- Welcome to Taos, Mayor Darren Cordova
- Approval of Agenda and July 28, 2010 Meeting Minutes

1:30 p.m. Public Comment Period

1:45 p.m. Old Business
- Written Reports
- Other Items

2 p.m. New Business
- EM SSAB Chairs' Recommendation on Baseline Funding Support,

Ralph Phelps

- Report from Nominating Committee, Pam Hemline
- Election of Chair and Vice-Chair for Fiscal Year (FY) 2011
- 2010 Long Term Surveillance and Maintenance Conference, Ralph Phelps
- Appoint Ad Hoc Committee for Annual Evaluation
- Other items

2:45 p.m. Items from DDFOs

3 p.m. Consideration and Action on FY 2011 Committee Work Plans

3:15 p.m. Break

3:30 p.m. Presentation on Air Monitoring at Los Alamos National Laboratory (LANL), Andrew Green

4:15 p.m. Storm Water Management at LANL

5 p.m. Dinner Break

6 p.m. Public Comment Period

6:15 p.m. Consideration and Action on Draft Recommendation(s), Ralph Phelps

6:45 p.m. Open Forum for Board Members

7 p.m. Adjourn, Ed Worth and Lee Bishop

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC on August 25, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–21679 Filed 8–30–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–485–000]

Tennessee Gas Pipeline Company; Notice of Application

August 24, 2010.

On August 12, 2010, Tennessee Gas Pipeline Company (Tennessee) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(b) of the Natural Gas Act and section 157 of the Commission's Regulations for authority to abandon ownership interest in certain Texas onshore and offshore supply facilities as well as its dedicated capacity in the Central Texas Gathering System, all as more fully detailed in the Application.

Questions concerning this application may be directed to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002 or by calling 713–420–3299, by faxing 713–420–1605, or by e-mailing *tom.joyce@elpaso.com* or Susan T. Halbach, Senior Counsel, Legal, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by calling 713–420–1601, by faxing 713–420–1601, or by e-mailing *susan.halbach@elpaso.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 seven 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) or TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21619 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2678–003]

Pacific Gas and Electric Company; Notice of Application for Amendment of License, and Soliciting Comments, Motions To Intervene, and Protests

August 24, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License to Remove a Portion of the Project's Transmission Line.

b. *Project No.:* 2678–003.

c. *Date Filed:* August 4, 2010.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Narrows No. 2—Smartville T.L.

f. *Location:* The project is located in Yuba and Nevada Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a–825r.

h. *Applicant Contact:* Forest Sullivan, Strategy and Regulation, Pacific Gas and Electric Company, 5555 Florin Perkins Road, Sacramento, CA 95826, (503) 305–5690 or *Frs3@pge.com.*

i. *FERC Contact:* Any questions regarding this notice should be directed to Jeremy Jessup at (202) 502–6779 or *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene and protest:* September 24, 2010. 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 at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: 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://ferc.gov.filing-comments.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments.

Please include the project number (P–2678–003) on any comments, motions, or protests.

k. *Description of Request:* Pacific Gas and Electric Company seeks an amendment of license to delete approximately 2.7 miles of the Narrows No. 2–Smartville Substation 60 kV transmission line extending between the new Narrows 2 distribution substation to the Smartville Substation from the Project license. The licensee states that this portion of the transmission line is no longer a "primary line" for the Narrows No. 2 Powerhouse Project and thus is not subject to licensing by the Commission.

l. *Location of the Application:* The filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable, (2) set forth in the heading the name of the applicant and the project numbers 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. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license amendment. 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. If an intervener 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21624 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1881–064]

PPL Holtwood, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 24, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Land and Shoreline Management Plan.

b. Project No. 1881–064.

c. *Date Filed:* July 29, 2010.

d. *Applicant:* PPL Holtwood, LLC (PPL).

e. *Name of Project:* Holtwood Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River, in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gary Petreski, PPL Holtwood, LLC, Two North Ninth Street (GENPL6), Allentown, Pennsylvania 18101; telephone (610) 774–5996.

i. *FERC Contact:* Any questions on this notice should be addressed to Hillary Berlin at (202) 502–8915, or *Hillary.Berlin@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* September 24, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* under the "e-filing" link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–1881–064) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of the Filing:* PPL, licensee for the Holtwood Hydroelectric Project, filed a Land and Shoreline Management Plan for the project. The plan is a comprehensive plan to manage the project's lands and shoreline in a manner that is consistent with license requirements and project purposes, and within the framework of regional, state, and federal initiatives to preserve, protect, and enhance the lower Susquehanna River Corridor and the Chesapeake Bay.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies or directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21622 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–13–000]

Yankee Cove Development, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

August 24, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI10–13–000.

c. *Date Filed:* June 4, 2010, supplemented August 23, 2010.

d. *Applicant:* Yankee Cove Development, LLC.

e. *Name of Project:* Yankee Cove Hydro Project.

f. *Location:* The proposed Yankee Cove Hydro Project will be located on Bessie Creek, near Juneau, Borough of Juneau, Alaska, affecting T. 38 S., R. 64 E., Copper River Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Naomi Hobbs, P.E., Yankee Cove Development, LLC, P.O. Box 210447, Auke Bay, Alaska 99821; *Telephone:* (907) 723–9800; *Fax:* (907) 789–5856; *e-mail: www.yankeecove@yahoo.com*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or *E-mail address: henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* September 24, 2010.

All documents should be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. Please include the docket number (DI10–13–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Yankee Cove Hydro Project

will consist of: (1) A proposed 1,100-square-foot reservoir; (2) a proposed eight-foot-high, twenty-two-foot-wide dam; (3) a twenty-inch diameter, 630-foot-long penstock; (4) a ten-foot-wide by twelve-foot-long powerhouse, containing a 5-kW generator; and (5) appurtenant facilities. All power will be used on site.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21620 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–81–000; Docket No. PR10–82–000; Docket No. PR10–83–000 (Not Consolidated)]

Chevron Keystone Gas Storage, LLC; Bridgeline Holdings, L.P.; New York State Electric & Gas Corporation; Notice of Baseline Filings

August 24, 2010.

Take notice that on August 19, 2010, August 20, 2010, and August 23, 2010, respectively the applicants listed above submitted their baseline filing of its Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion 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 the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 Wednesday, September 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21618 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

August 23, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1088–000.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: Gulfstream Natural Gas System, L.L.C. submits tariff filing per 154.204: Gulfstream Term Extension Tariff Filing to be effective 9/18/2010.

Filed Date: 08/19/2010.

Accession Number: 20100819–5066.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: RP10–1089–000.

Applicants: Cheniere Creole Trail Pipeline, L.P.

Description: Cheniere Creole Trail Pipeline, L.P. submits tariff filing per 154.203: Chiniere Creole Trail Pipeline,

L.P. Baseline Tariff to be effective 9/30/2010.

Filed Date: 08/20/2010.

Accession Number: 20100820–5031.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Docket Numbers: RP10–1090–000.

Applicants: Conectiv Energy Supply, Inc.

Description: Request for Temporary Waiver of Conectiv Energy Supply, Inc.

Filed Date: 08/19/2010.

Accession Number: 20100819–5133.

Comment Date: 5 p.m. Eastern Time on Thursday, August 26, 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. 2010–21660 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 19, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1084–000.

Applicants: Discovery Gas Transmission LLC.

Description: Discovery Gas Transmission LLC submits tariff filing per 154.202: Baseline Tariff Filing to be effective 8/17/2010.

Filed Date: 08/17/2010.

Accession Number: 20100817–5082.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: RP10–1085–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthrust Pipeline Company submits tariff filing per 154.203: Baseline to be effective 8/18/2010.

Filed Date: 08/18/2010.

Accession Number: 20100818–5073.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: RP10–1086–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits tariff filing per 154.203: Compliance filing for sheets 729, 729.01, 737A, 737A.01, 739A, 739A.01 to be effective 7/22/2010.

Filed Date: 08/18/2010.

Accession Number: 20100818–5091.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: RP10–1087–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.203: Baseline to be effective 8/19/2010.

Filed Date: 08/19/2010.

Accession Number: 20100819–5029.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 31, 2010.

Docket Numbers: CP10–487–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits an abbreviated application to abandon PS firm transportation service for Laurens, SC and Shelby, NC.

Filed Date: 08/16/2010.

Accession Number: 201008165121.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: CP10–488–000.

Applicants: Columbia Gas Transmission LLC.

Description: Columbia Gas Transmission's lease of certain pipeline capacity to and from Millennium Pipeline Company application for an amendment to the certificates of public convenience and necessity.

Filed Date: 08/17/2010.

Accession Number: 20100817–5110.

Comment Date: 5 p.m. Eastern time on Monday, August 30, 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. 2010–21659 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

August 17, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–8–003.
Applicants: Tuscarora Gas Transmission Company.
Description: Report of Tuscarora Gas Transmission Company.
Filed Date: 08/12/2010.
Accession Number: 20100812–5124.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 24, 2010.

Docket Numbers: RP10–983–001.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.203: Corrections to Transco's Baseline Filing, to be effective 7/20/2010.
Filed Date: 08/12/2010.
Accession Number: 20100812–5002.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 24, 2010.

Docket Numbers: RP10–960–002.
Applicants: B–R Pipeline Company.
Description: B–R Pipeline Company submits tariff filing per 154.203: Errata Compliance to be effective 7/12/2010 under RP10–960 Filing Type: 580.
Filed Date: 08/16/2010.
Accession Number: 20100816–5101.
Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: RP10–961–002.
Applicants: USG Pipeline Company.
Description: USG Pipeline Company submits tariff filing per 154.203: Errata compliance to be effective 7/12/2010.
Filed Date: 08/16/2010.
Accession Number: 20100816–5058.
Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–21658 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

August 17, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1079–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.203: Baseline Filing to be effective 8/16/2010.
Filed Date: 08/16/2010.
Accession Number: 20100816–5049.
Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: RP10–1080–000.
Applicants: T.W. Phillips Pipeline Corp.
Description: T.W. Phillips Pipeline Corp. submits tariff filing per 154.203: TW Phillips FERC Gas Tariff to be effective 8/16/2010.
Filed Date: 08/16/2010.
Accession Number: 20100816–5050.
Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: RP10–1081–000.
Applicants: Honeoye Storage Corporation.
Description: Honeoye Storage Corporation submits First Revised Sheet 12 *et al* of its FERC Gas Tariff, Original Volume 1A, to be effective 9/15/10.
Filed Date: 08/16/2010.
Accession Number: 20100816–0212.
Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: RP10–1082–000.
Applicants: Mojave Pipeline Company.
Description: Mojave Pipeline Company submits tariff filing per 154.203: Rate Case Settlement associated with Docket No. RP07–310–000 to be effective 12/31/9998.
Filed Date: 08/16/2010.
Accession Number: 20100816–5115.
Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: RP10–1083–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits tariff filing per 154.203: Baseline Electronic Tariff Filing to be effective 8/16/2010.
Filed Date: 08/16/2010.
Accession Number: 20100816–5133.
Comment Date: 5 p.m. Eastern Time on Monday, August 30, 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. 2010–21657 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

August 24, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2336–000.
Applicants: DeGreeff DP, LLC.
Description: DeGreeff DP, LLC submits tariff filing per 35.12: DeGreeffpa, DP, LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5065.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2337–000.
Applicants: CL Power Sales Eight, L.L.C.
Description: CL Power Sales Eight, L.L.C. submits tariff filing per 35.12: CL Power Sales Eight, L.L.C. Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5066.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2338–000.
Applicants: CP Power Sales Nineteen, L.L.C.
Description: CP Power Sales Nineteen, L.L.C. submits tariff filing per 35.12: CP Power Sales Nineteen, L.L.C. Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5067.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2339–000.
Applicants: CP Power Sales Seventeen, L.L.C.
Description: CP Power Sales Seventeen, L.L.C. submits tariff filing per 35.12: CP Power Sales Seventeen, L.L.C. Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5068.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2340–000.
Applicants: CP Power Sales Twenty, L.L.C.
Description: CP Power Sales Twenty, L.L.C. submits tariff filing per 35.12: CP Power Sales Twenty, L.L.C. Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5069.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2341–000.
Applicants: Edison Mission Marketing & Trading, Inc.
Description: Edison Mission Marketing & Trading, Inc. submits tariff filing per 35.12: Edison Mission Marketing & Trading, Inc. Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5070.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2342–000.
Applicants: Edison Mission Solutions, LLC.
Description: Edison Mission Solutions, LLC submits tariff filing per 35.12: Edison Mission Solutions, LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5071.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2343–000.
Applicants: J.P. Morgan Commodities Canada Corporation.
Description: J.P. Morgan Commodities Canada Corporation submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5072.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2344–000.
Applicants: EME Homer City Generation, L.P.
Description: EME Homer City Generation, L.P. submits tariff filing per 35.12: EME Homer City Generation. L.P. Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5073.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2345–000.
Applicants: Domtar Maine, LLC.
Description: Domtar Maine, LLC submits tariff filing per 35.12: Application for MBR Authority and Request for Waivers and Blanket Authorization to be effective 9/23/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5074.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2346–000.
Applicants: Forward WindPower LLC.
Description: Forward WindPower LLC submits tariff filing per 35.12: Forward Wind Power LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5075.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2347–000.
Applicants: Groen Wind, LLC.
Description: Groen Wind, LLC submits tariff filing per 35.12: Groen Wind, LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5079.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2348–000.
Applicants: High Lonesome Mesa, LLC.
Description: High Lonesome Mesa, LLC submits tariff filing per 35.12: High Lonesome Mesa, LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5082.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2349–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator submits tariff filing per 35.13(a)(2)(iii: LGIA—NYSEG and

Standard Binghamton—8/24/10 to be effective 8/24/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5085.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2350–000.

Applicants: Hillcrest Wind, LLC.

Description: Hillcrest Wind, LLC submits tariff filing per 35.12: Hillcrest Wind, LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5089.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2351–000.

Applicants: Jeffers Winder 20, LLC.

Description: Jeffers Winder 20, LLC submits tariff filing per 35.12: Jeffers Wind 20, LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5098.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2352–000.

Applicants: Larswind, LLC.

Description: Larswind, LLC submits its Baseline FERC Electric Tariff pursuant to Order No 714, to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5099.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2353–000.

Applicants: Lookout WindPower LLC.

Description: Lookout WindPower LLC submits tariff filing per 35.12: Lookout WindPower LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5100.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2354–000.

Applicants: Midway-Sunset Cogeneration Company.

Description: Midway-Sunset Cogeneration Company submits tariff filing per 35.12: Midway Sunset Cogeneration Company to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5101.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2355–000.

Applicants: Midwest Generation LLC.

Description: Midwest Generation LLC submits tariff filing per 35.12: Midwest Generation, LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5102.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2356–000.

Applicants: Sierra Wind, LLC.

Description: Sierra Wind, LLC submits tariff filing per 35.12: Sierra Wind, LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5106.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2357–000.

Applicants: Sleeping Bear, LLC.

Description: Sleeping Bear, LLC submits tariff filing per 35.12: Sleeping Bear, LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5107.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2358–000.

Applicants: Storm Lake Power Partners I LLC.

Description: Storm Lake Power Partners I LLC submits tariff filing per 35.12: Storm Lake Power Partners I, LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5108.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2359–000.

Applicants: Sunrise Power Company, LLC.

Description: Sunrise Power Company, LLC submits tariff filing per 35.12: Sunrise Power Company, LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5109.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2360–000.

Applicants: TAIR Windfarm, LLC.

Description: TAIR Windfarm, LLC submits tariff filing per 35.12: TAIR Windfarm, LLC Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5110.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2361–000.

Applicants: Wildorado Wind, LLC.

Description: Wildorado Wind, LLC submits its Baseline Filing of FERC Electric Tariff, pursuant to Order No 714, to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5111.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2362–000.

Applicants: Coalinga Cogeneration Company.

Description: Coalinga Cogeneration Company submits its Baseline Filing of FERC Electric Tariff, pursuant to Order No 714, to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5112.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2363–000.

Applicants: Kern River Cogeneration Company.

Description: Kern River Cogeneration Company submits tariff filing per 35.12: Kern River Cogeneration Company Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5113.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2364–000.

Applicants: Mid-Set Cogeneration Company.

Description: Mid-Set Cogeneration Company submits tariff filing per 35.12: Mid-Set Cogeneration Company Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5114.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2365–000.

Applicants: Salinas River Cogeneration Company.

Description: Salinas River Cogeneration Company submits tariff filing per 35.12: Salinas River Cogeneration Company Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5115.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2366–000.

Applicants: Sargent Canyon Cogeneration Company.

Description: Sargent Canyon Cogeneration Company submits tariff filing per 35.12: Sargent Canyon Cogeneration Company to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5116.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2367–000.

Applicants: Sycamore Cogeneration Company.

Description: Sycamore Cogeneration Company submits tariff filing per 35.12: Sycamore Cogeneration Company Baseline Filing to be effective 8/25/2010.

Filed Date: 08/24/2010.

Accession Number: 20100824–5117.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2368–000.

Applicants: Laredo Ridge Wind, LLC.
Description: Laredo Ridge Wind, LLC submits tariff filing per 35.12: Laredo Ridge Wind Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5118.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2369–000.
Applicants: Taloga Wind, LLC.
Description: Taloga Wind, LLC submits tariff filing per 35.12: Taloga Wind Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5119.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–21656 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

August 24, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–84–000.
Applicants: Black Hills Power, Inc.
Description: Supplemental Information of Black Hills Power Inc.
Filed Date: 08/23/2010.
Accession Number: 20100823–5188.
Comment Date: 5 p.m. Eastern Time on Thursday, September 02, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–6–118; EL04–135–120; EL02–111–139; EL03–212–134.
Applicants: Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C.; Ameren Services Company.
Description: PJM Transmission Owners Agreement Administrative Committee submits revisions to PJM Open Access Transmission Tariff.
Filed Date: 08/19/2010.
Accession Number: 20100823–0204.
Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Docket Numbers: ER09–1196–002.
Applicants: Lost Creek Wind, LLC.
Description: Supplement to Notice of Change in Status.
Filed Date: 08/23/2010.
Accession Number: 20100823–5175.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–1795–001.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Cooperative, Inc. submits tariff filing per 35: 2010 Annual Update to be effective 7/16/2010.
Filed Date: 08/18/2010.
Accession Number: 20100818–5028.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: ER10–2210–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator submits tariff filing per 35.17(a): Compliance Filing In-City ICAP—Kavanah to be effective 6/30/2010.
Filed Date: 08/23/2010.
Accession Number: 20100823–5172.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2299–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: Dynamic Transfer Operating Agreement between ESI, Plum Point, and Osceola to be effective 8/20/2010.
Filed Date: 08/23/2010.
Accession Number: 20100823–5168.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2300–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator submits tariff filing per 35: Compliance Filing In-City ICAP—Kavanah to be effective 6/30/2010.
Filed Date: 08/23/2010.
Accession Number: 20100823–5173.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2301–000.
Applicants: New York State Electric & Gas Corporation.
Description: New York State Electric & Gas Corporation submits its baseline market-based rate tariff, FERC Electric Tariff, First Revised Volume No 3, to be effective 8/23/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5000.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2302–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits its Market-Based Rates Tariff filing FERC Electric Tariff, Volume No 3, to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5002.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2303–000.
Applicants: Arizona Public Service Company.
Description: Request for Interconnection Queue Waiver Authorization of Arizona Public Service Company.
Filed Date: 08/24/2010.
Accession Number: 20100824–5017.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2304–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc *et al* submits Notice of Cancellation to First Revised Rate Schedule 184 and Rate Schedules FERC Nos 311 and 312 with Midwest Energy, Inc.
Filed Date: 08/23/2010.
Accession Number: 20100824–0202.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2305–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed interconnection service agreement with AES Armenia Mountain Wind, LLC *et al.*
Filed Date: 08/23/2010.
Accession Number: 20100824–0201.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2306–000.
Applicants: Rochester Gas and Electric Corporation.
Description: Rochester Gas and Electric Corporation submits tariff filing per 35.12: RG&E MBR Baseline eTariff Filing to be effective 8/23/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5020.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2307–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator submits tariff filing per 35.12: NYISO Agreements to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5023.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2308–000.
Applicants: Covanta Delano, Inc.
Description: Covanta Delano, Inc. submits its baseline market-based rate tariff filing, FERC Electric Rate Schedule, First Revisd Volume No 1, to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5029.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2309–000.
Applicants: Elwood Energy, LLC.
Description: Elwood Energy, LLC submits tariff filing per 35.12: Baseline to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5032.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2310–000.
Applicants: Covanta Delaware Valley, L.P.
Description: Covanta Delaware Valley, L.P. submits tariff filing per 35.12: Covanta Delaware Valley MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5040.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2311–000.
Applicants: Covanta Essex Company.
Description: Covanta Essex Company submits tariff filing per 35.12: Covanta Essex MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5041.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2312–000.
Applicants: Covanta Hempstead Company.
Description: Covanta Hempstead Company submits tariff filing per 35.12: Covanta Hempstead MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5042.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2313–000.
Applicants: Covanta Maine, LLC.
Description: Covanta Maine, LLC submits tariff filing per 35.12: Covanta Maine MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5043.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2314–000.
Applicants: Covanta Energy Marketing LLC.
Description: Covanta Energy Marketing LLC submits tariff filing per 35.12: Covanta Marketing MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5044.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2315–000.
Applicants: Covanta Niagara, L.P.
Description: Covanta Niagara, L.P. submits tariff filing per 35.12: Covanta Niagara MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5045.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2316–000.
Applicants: Covanta Plymouth Renewable Energy Limited Partnership
Description: Covanta Plymouth Renewable Energy Limited Partnership submits tariff filing per 35.12: Covanta Plymouth MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5046.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2317–000.
Applicants: BE CA LLC.
Description: BE CA LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5047.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2318–000.
Applicants: Covanta Power, LLC.
Description: Covanta Power, LLC submits tariff filing per 35.12: Covanta Power MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5048.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2319–000.
Applicants: BE Alabama LLC.
Description: BE Alabama LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5049.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2320–000.
Applicants: BE Allegheny LLC.
Description: BE Allegheny LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.

Accession Number: 20100824–5050.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2321–000.
Applicants: Covanta Union, Inc.
Description: Covanta Union, Inc. submits tariff filing per 35.12: Covanta Union MBR Baseline eTariff Filing to be effective 8/24/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5051.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2322–000.
Applicants: BE Ironwood LLC.
Description: BE Ironwood LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5052.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2323–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits Second Revised Sheet 111a *et al* to Third Revised Rate Schedule FERC No 24 to be effective 10/25/10.
Filed Date: 08/24/2010.
Accession Number: 20100824–0208.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2324–000.
Applicants: BE KJ LLC.
Description: BE KJ LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5053.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2325–000.
Applicants: BE Louisiana LLC.
Description: BE Louisiana LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5054.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2326–000.
Applicants: Cedar Brakes I LLC.
Description: Cedar Brakes I LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5055.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2327–000.
Applicants: Cedar Brakes II LLC.
Description: Cedar Brakes II LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5056.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2328–000.
Applicants: Central Power & Lime LLC.
Description: Central Power & Lime LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5057.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2329–000.
Applicants: Vineland Energy LLC.
Description: Vineland Energy LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5058.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2330–000.
Applicants: Utility Contract Funding, LLC.
Description: Utility Contract Funding, LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5059.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2331–000.
Applicants: J.P. Morgan Ventures Energy Corporation.
Description: J.P. Morgan Ventures Energy Corporation submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5060.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2332–000.
Applicants: BE Rayle LLC.
Description: BE Rayle LLC submits tariff filing per 35.12: Baseline eTariff Filing Pursuant to Order No. 714 to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5061.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2333–000.
Applicants: Bendwind, LLC.
Description: Bendwind, LLC submits tariff filing per 35.12: Bendwind, LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5062.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2334–000.
Applicants: Big Sky Wind, LLC.
Description: Big Sky Wind, LLC submits tariff filing per 35.12: Big Sky Wind, LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5063.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2335–000.
Applicants: DeGreeffpa, LLC.
Description: DeGreeffpa, LLC submits tariff filing per 35.12: DeGreeffpa, LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5064.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Docket Numbers: ER10–2336–000.
Applicants: DeGreeff DP, LLC.
Description: DeGreeff DP, LLC submits tariff filing per 35.12: DeGreeffpa, DP, LLC Baseline Filing to be effective 8/25/2010.
Filed Date: 08/24/2010.
Accession Number: 20100824–5065.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 14, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying

facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–21655 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

August 23, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2815–000.
Applicants: Wheelabrator Shasta Energy Company Inc.
Description: Response to request of FERC staff of Wheelabrator Shasta Energy Company Inc.
Filed Date: 08/20/2010.
Accession Number: 20100820–5134.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER05–1232–024; ER07–1358–014.
Applicants: J.P. Morgan Ventures Energy Corporation.
Description: J.P. Morgan Ventures Energy Corporation and BE Louisiana LLC submit Second Supplement to Updated Market Power Analysis and Order No. 697 Compliance Filing.
Filed Date: 08/17/2010.
Accession Number: 20100817–5123.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: ER06–1399–007.
Applicants: Sunbury Generation LP.
Description: Supplemental Information of Sunbury Generation LP.
Filed Date: 08/23/2010.
Accession Number: 20100823–5092.
Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER09–1650–001; OA09–32–001.
Applicants: BP Wind Energy North America Inc.
Description: CFA Parties submits amendment to the Common Facilities Agreement, effective 8/18/10.
Filed Date: 08/17/2010.
Accession Number: 20100818–0201.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: ER10–895–005.
Applicants: Detroit Edison Company.
Description: The Detroit Edison Company submits Notice of Cancellation.
Filed Date: 08/12/2010.
Accession Number: 20100812–0208.
Comment Date: 5 p.m. Eastern Time on Thursday, September 02, 2010.

Docket Numbers: ER10–1400–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Response to Deficiency Letter of Midwest Independent System Transmission Operator, Inc.
Filed Date: 08/18/2010.
Accession Number: 20100818–5024.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: ER10–1466–002.
Applicants: Community Power & Utility LLC.
Description: Community Power & Utility LLC submits Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: 08/18/2010.
Accession Number: 20100819–0208.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: ER10–1805–001.
Applicants: The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company submits tariff filing per 35: PSNH Compliance Baseline Filing of Market-Based Tariff Under Order No. 714 to be effective 7/19/2010.
Filed Date: 08/20/2010.
Accession Number: 20100820–5142.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–1808–001.
Applicants: Western Massachusetts Electric Company.
Description: Western Massachusetts Electric Company submits tariff filing per 35: WMECO Compliance Baseline Filing of Market-Based Tariff Under Order No. 714 to be effective 7/19/2010.
Filed Date: 08/20/2010.
Accession Number: 20100820–5146.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–1810–001.
Applicants: E. I. du Pont de Nemours and Company.
Description: E. I. du Pont de Nemours and Company submits tariff filing per 35.17(b): Amendment to DuPont MBR Tariff to be effective 9/30/2010.
Filed Date: 08/20/2010.
Accession Number: 20100820–5053.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–1879–001.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc. submits tariff filing per 35: WVPA Baseline Formulary Rate Tariff to be effective 8/20/2010.
Filed Date: 08/20/2010.
Accession Number: 20100820–5141.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2111–001.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits revisions to Open Access Transmission Tariff.
Filed Date: 08/20/2010.
Accession Number: 20100823–0201.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2151–001.
Applicants: Windstar Energy, LLC.
Description: Windstar Energy, LLC submits Original Sheet No 1 to FERC Electric Tariff, Original Volume No 1, effective 9/5/10.
Filed Date: 08/18/2010.
Accession Number: 20100819–0209.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Docket Numbers: ER10–2259–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Co, LLC submits a request for

authorization to make wholesale power sales to an affiliate.

Filed Date: 08/17/2010.

Accession Number: 20100817–0213.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: ER10–2279–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Notice of Termination for First Revised Service Agreement No. 357.

Filed Date: 08/18/2010.

Accession Number: 20100818–0205.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 08, 2010.

Docket Numbers: ER10–2284–000.

Applicants: National Grid Generation LLC.

Description: National Grid Generation LLC submits filing containing certain information re its Pension and Other Post Employment Benefits Costs for the year ending 12/31/10.

Filed Date: 08/19/2010.

Accession Number: 20100819–0205.

Comment Date: 5 p.m. Eastern Time on Thursday, September 09, 2010.

Docket Numbers: ER10–2285–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company submits tariff filing per 35.12: CMP Baseline eTariff Filing to be effective 8/19/2010.

Filed Date: 08/20/2010.

Accession Number: 20100820–5021.

Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2286–000.

Applicants: PJM Interconnection, LLC

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Alethea Cleantech Advisors, LLC and Public Service Electric & Gas Co executed on 7/21/10.

Filed Date: 08/20/2010.

Accession Number: 20100820–0203.

Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2287–000.

Applicants: Unitil Power Corp.

Description: Unitil Power Corp. submits Notice of Cancellation of its FERC Electric Tariff, Third Revised Volume 3.

Filed Date: 08/19/2010.

Accession Number: 20100820–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, September 09, 2010.

Docket Numbers: ER10–2288–000.

Applicants: Optim Energy Marketing LLC.

Description: Optim Energy Marketing LLC submits tariff filing per 35.12: Optim Energy Marketing MBR Baseline to be effective 8/20/2010.

Filed Date: 08/20/2010.

Accession Number: 20100820–5063.

Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2289–000.

Applicants: UniSource Energy Development Company.

Description: UniSource Energy Development Company submits tariff filing per 35.12: Baseline Filing for UniSource Energy Development Company MBR Tariff to be effective 8/23/2010.

Filed Date: 08/20/2010.

Accession Number: 20100820–5073.

Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2290–000.

Applicants: Avista Corporation.

Description: Avista Corporation submits its baseline tariff filing to FERC Electric Tariff, Volume No. 9, Version 8.0.0 et al., to be effective 8/20/2010.

Filed Date: 08/20/2010.

Accession Number: 20100820–5075.

Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2291–000.

Applicants: Westmoreland Partners.

Description: Westmoreland Partners submits tariff filing per 35.12: Baseline Market-Based Rates to be effective 8/20/2010.

Filed Date: 08/20/2010.

Accession Number: 20100820–5112.

Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2292–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii): ETEC 9th Rev. NITSA to be effective 8/1/2010.

Filed Date: 08/20/2010.

Accession Number: 20100820–5143.

Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ER10–2293–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–08–23 CAISO Scarcity Pricing Compliance to be effective 12/14/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5068.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2294–000.

Applicants: ORNI 18, LLC.

Description: ORNI 18, LLC submits tariff filing per 35.12: ORNI 18 Baseline MBR Filing to be effective 8/17/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5071.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2295–000.

Applicants: WSPP Inc.

Description: WSPP Inc. submits tariff filing per 35.13(a)(2)(iii): Submission of New Schedules D and E to WSPP Agreement to be effective 11/1/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5085.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2296–000.

Applicants: Hermiston Power, LLC.

Description: Hermiston Power, LLC submits tariff filing per 35.13(a)(2)(iii): Hermiston Power, LLC—BPA Transmission Rights Filing to be effective 8/24/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5104.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2297–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–08–23 CAISO CRR Credit Provisions Amendment to be effective 11/1/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5106.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Docket Numbers: ER10–2298–000.

Applicants: Enserco Energy Inc.

Description: Enserco Energy Inc. submits tariff filing per 35.12: MBR Application of Enserco Energy LLC to be effective 9/1/2010.

Filed Date: 08/23/2010.

Accession Number: 20100823–5107.

Comment Date: 5 p.m. Eastern Time on Monday, September 13, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–54–000.

Applicants: MDU Resources Group, Inc.

Description: Application of MDU Resources Group, Inc. under New Docket for authority to issue up to $1 billion worth of various securities for the next 2 years.

Filed Date: 08/19/2010.

Accession Number: 20100819–5050.

Comment Date: 5 p.m. Eastern Time on Thursday, September 09, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a

compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–21654 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

August 20, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1373–001.
Applicants: Pacific Gas and Electric Company.
Description: Compliance Refund Report Filing in the Matter of the Termination of Generator Interconnection Agreements of Pacific Gas and Electric Company.
Filed Date: 08/20/2010.
Accession Number: 20100820–5069.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–55–000.
Applicants: MidAmerican Energy Company.
Description: Application for Authorization to Issue and Sell up to $1.75 Billion of Bonds, Notes, Debentures, Guarantees or Other Evidences of Long-Term Indebtedness of MidAmerican Energy Company.
Filed Date: 08/20/2010.
Accession Number: 20100820–5081.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

Docket Numbers: ES10–56–000.
Applicants: MidAmerican Energy Company.
Description: Application for Authorization to Issue and Sell up to $1.2 Billion of Promissory Notes or Other Evidences of Unsecured Short-Term Indebtedness of MidAmerican Energy Company.
Filed Date: 08/20/2010.
Accession Number: 20100820–5118.
Comment Date: 5 p.m. Eastern Time on Friday, September 10, 2010.

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(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–21653 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

August 23, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–1033–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.205(b): Amendment, to be effective 8/1/2010.
Filed Date: 08/20/2010.
Accession Number: 20100820–5107.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Docket Numbers: RP10–1034–001.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.205(b): Amendment Filing, to be effective 8/1/2010.
Filed Date: 08/20/2010.
Accession Number: 20100820–5105.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Docket Numbers: RP10–1038–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.205(b): Amendment, to be effective 8/1/2010.
Filed Date: 08/20/2010.
Accession Number: 20100820–5109.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 01, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–21648 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG10–39–000]

Hatchet Ridge Wind, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

August 23, 2010.

Take notice that during the month of July 2010, the status of the above-captioned entity as an Exempt Wholesale Generator became effective by operation of the Commission's regulations, 18 CFR 366.7(a).

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–21649 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2146–126]

Alabama Power Company; Notice of Availability of Environmental Assessment

August 24, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by Alabama Power Company (licensee) for non-project use of project lands and waters at the Coosa River Project (FERC No. 2146). An environmental assessment (EA) has been prepared as part of staff's review of the proposal. The proposed use would be located on Logan Martin Lake in Talladega County, Alabama.

In the application, the licensee proposes to issue all Shoreline Real Estate, LLC, to install recreational facilities for use by residents of the Lincoln Harbor development. The proposed facilities would consist of 15 floating, cluster docks accommodating a total of 176 watercraft, one concrete boat ramp, 2 wooden boardwalks, 2 asphalt-paved walking trails, and 2 wooden bridges. The applicant would also construct a paved parking lot and concrete loading pier, the majority of both to be located outside the project boundary. The loading pier will service a dry storage facility located outside of the project boundary. The EA contains Commission staff's analysis of the probable environmental impacts of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled "Order Modifying and Approving Non-Project Use of Project Lands and Waters," which was issued August 24, 2010, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "elibrary" link. Enter the docket number (P–2146) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21623 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Attendance at the Entergy Regional State Committee Meeting

August 24, 2010.

The Federal Energy Regulatory Commission hereby gives notice that

members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Entergy Regional State Committee Meeting

September 9, 2010 (9 a.m.–5 p.m.), Sheraton New Orleans, 500 Canal Street, New Orleans, LA 70130, 504–525–2500.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32	Entergy Services, Inc.
Docket No. OA08–59	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL05–15	Arkansas Electric Cooperative Corp. v. Entergy Arkansas, Inc.
Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–60	Ameren Services Co. v. Entergy Services, Inc.
Docket No. EL09–43	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–61	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–78	South Mississippi Electric Power Association v. Entergy Services, Inc.
Docket No. EL10–55	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–65	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER08–1057	Entergy Services, Inc.
Docket No. ER09–636	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–877	Entergy Services, Inc.
Docket No. ER09–882	Entergy Services, Inc.
Docket No. ER09–1214	Entergy Services, Inc.
Docket No. ER09–1224	Entergy Services, Inc.
Docket No. ER10–794	Entergy Services, Inc.
Docket No. ER10–879	Entergy Services, Inc.
Docket No. ER10–984	Entergy Services, Inc.
Docket No. ER10–1350	Entergy Services, Inc.
Docket No. ER10–2246	Entergy Services, Inc.
Docket No. ER10–2247	Entergy Services, Inc.
Docket No. ER10–2267	Entergy Services, Inc.
Docket No. ER10–2292	Entergy Services, Inc.
Docket No. ER10–2299	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–21621 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2198–000]

Lakefield Wind Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 20, 2010.

This is a supplemental notice in the above-referenced proceeding, of Lakefield Wind Project, LLC's application for market-based rate authority, with an accompanying rate schedule, 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 September 9, 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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) 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. 2010–21652 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–2151–000]

Windstar Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 20, 2010.

This is a supplemental notice in the above-referenced proceeding, of Windstar Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, 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 September 9, 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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) 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. 2010–21651 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice Regarding Staff Technical Conference

August 23, 2010.

California Independent System Operator Corporation	Docket Nos. ER10–1401–000, ER10–2191–000.
Green Energy Express LLC, 21st Century Transmission Holdings, LLC	Docket No. EL10–76–000.
Southern California Edison Company	Docket Nos. ER10–732–000, ER10–732–001.
Southern California Edison Company	Docket Nos. EL10–1–000, EL10–1–001, EL10–1–002.
Southern California Edison Company	Docket Nos. ER10–796–000, ER10–796–001.
Southern California Edison Company	Docket No. EL10–81–000.

By order dated July 26, 2010, in Docket No. ER10–1401–000, the Federal Energy Regulatory Commission (Commission) directed staff to convene a technical conference regarding California Independent System Operator Corporation's (CAISO) proposed Revised Transmission Planning Process (RTPP).[1]

Pursuant to notices issued on August 3, 2010 and August 19, 2010,[2] such conference will be held on August 24, 2010 at the Commission's headquarters at 888 First Street, NE., Washington, DC 20426, beginning at 9 a.m. (EDT) in the Commission Meeting Room. The technical conference will be led by Commission staff. Commissioners may attend the conference. All interested persons are invited to attend, and registration is not required.

As stated previously, the purpose of the technical conference is to discuss the issues raised by CAISO's proposed revisions to its Open Access Transmission Tariff (Tariff) to implement its RTPP in Docket No. ER10–1401–000 and obtain additional information regarding CAISO's proposal. However, because CAISO's RTPP filing presents issues that may be tangentially related to the proceeding in Docket No. EL10–81–000, out of an abundance of caution, we hereby notify parties that the technical conference discussion may touch upon issues pending in this proceeding.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC 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 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information on this conference, please contact Robert Petrocelli at *Robert.Petrocelli@ferc.gov* or (202) 502–8447, or Katie Detweiler at *Katie.Detweiler@ferc.gov* or (202) 502–6424.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–21650 Filed 8–30–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *Cal. Indep. Sys. Operator Corp.,* 132 FERC ¶ 61,067 (2010).

[2] A further supplemental notice was issued on August 20, 2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9195–4; Docket ID No. EPA–HQ–ORD–2010–0709]

A Method to Assess Climate-Relevant Decisions: Application in the Chesapeake Bay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The EPA is announcing a 60-day public comment period for the draft document titled, "A Method to Assess Climate-Relevant Decision: Application in the Chesapeake Bay" (EPA/600/R–10/096a). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

In the 2010 Executive Order (EO) Strategy entitled, *Protecting and Restoring the Chesapeake Bay Watershed,* EPA has committed to "minimize the vulnerability of the Chesapeake Bay watershed to adverse impacts from climate change." The EO Strategy also commits EPA to ensuring that "TMDL allocations account for climate change impacts [by working] in conjunction with the states to conduct an analysis by 2017 to consider accounting for uncertainties of climate change in TMDL allocations." To accomplish this, it is necessary to understand the rates at which conditions are changing and are projected to change in the future; how various factors, such as land-use changes, interact with climate change impacts; and the likely consequences for water quality, habitats, fish and wildlife and communities. This draft report presents a systematic approach for evaluating these factors and practices for their relative potential effectiveness in ameliorating climate changes impacts. The report also includes the results of applying this approach in a pilot assessment of management practices in the Chesapeake Bay watershed. The practices evaluated could be used for both nutrient and sediment reductions, and also to ameliorate the effects of climate change on water quality that will ultimately inform the 2017 reassessment for Bay restoration.

The public comment period and the external peer-review workshop, which will be scheduled at a later date and announced in the **Federal Register**, are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments that are submitted in accordance with this notice to the external peer-review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

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.

DATES: The 60-day public comment period begins August 31, 2010, and ends November 1, 2010. Technical comments should be in writing and must be received by EPA by November 1, 2010.

ADDRESSES: The draft "A Method To Assess Climate-Relevant Decisions: Application in the Chesapeake Bay" is available via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (IMT), NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, "A Method To Assess Climate-Relevant Decisions: Application in the Chesapeake Bay."

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; *telephone:* 202–566–1752; *facsimile:* 202–566–1753; or *e-mail: ORD.Docket@epa.gov.*

If you need technical information about the document, please contact Susan Julius, National Center for Environmental Assessment (NCEA); *telephone:* 703–347–8619; *facsimile:* 703–347–8694; *e-mail: julius.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Project/Document

Climate change is a global phenomenon that is affecting natural and human systems in all parts of the world. Some of the decisions and actions taken to manage these systems are likely to be affected by climate change and may likewise affect the vulnerability of the managed resource or ecosystem to climate change. The goal of this study is to formalize an approach to inventory and analyze management decisions in order to produce useful information targeted toward effective adaptation to climate change. The approach uses as its starting point ongoing planning processes and decisions geared toward achieving environmental management goals, and then collects information on decisions and prioritizes them according to specific attributes. The pilot study described in this report applies this approach and examines its usefulness to decision makers.

The major steps of the approach are to (1) select a study area and compile a list of key decisions (2) develop criteria for evaluating the climate-relevance of decisions; (3) apply the criteria to select decisions that are potentially sensitive to climate change; (4) solicit expert judgment regarding those selections (and refine the selections accordingly); and (5) test alternative weighting schemes for prioritizing decisions most in need of decision support or additional research based on the selected attributes.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2010–0709, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three

copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0709. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: August 25, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–21696 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9195–3]

Issuance of NPDES General Permits for Wastewater Lagoon Systems Located in Indian Country in Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of NPDES general permits.

SUMMARY: EPA Region 8 is hereby giving notice of its reissuance of five National Pollutant Discharge Elimination System (NPDES) general permits for wastewater lagoon systems that are located in Indian country in the States of Montana, North Dakota, South Dakota, Utah and Wyoming and the issuance of the NPDES general permit for wastewater lagoon systems that are located in Indian country in the State of Colorado and that are treating primarily domestic wastewater. The general permits are grouped geographically by State, with the permit coverage being for specified Indian reservations in the State; any land held in trust by the United States for an Indian Tribe; and any other areas which are Indian country within the meaning of 18 U.S.C. 1151. The permits for the States of MT, ND, SD, UT, and WY are being reissued and replace permits that were issued in 2004. Those permits expired August 16, 2009, and have been administratively extended. The permit for the State of Colorado is being issued for the first time. The effective date of these general permits is September 14, 2010.

The NPDES permit number and the area covered by that general permit are listed below by State:

Colorado: COG589### This permit covers the Southern Ute Reservation and the Ute Mountain Reservation, including those portions of the Ute Mountain Reservation located in New Mexico and Utah; any land within the State of Colorado held in trust by the United States for an Indian Tribe; and any other areas within the State of Colorado which are Indian country within the meaning of 18 U.S.C. 1151.

Montana: MTG589### This permit covers the Blackfeet Indian Reservation of Montana; the Crow Indian Reservation; the Flathead Reservation; the Fort Belknap Reservation of Montana; the Fort Peck Indian Reservation; the Northern Cheyenne Indian Reservation; the Rocky Boy's Reservation; any land within the State of Montana held in trust by the United States for an Indian Tribe; and any other areas within the State of Montana which are Indian country within the meaning of 18 U.S.C. 1151.

North Dakota: NDG589### This permit covers the Fort Berthold Reservation; the Spirit Lake Indian Reservation; the Standing Rock Sioux Reservation; the Turtle Mountain Reservation; any land within the State of North Dakota held in trust by the United States for an Indian Tribe; and any other areas within the State of North Dakota which are Indian country within the meaning of 18 U.S.C. 1151.

This permit includes that portion of the Standing Rock Sioux Reservation and associated Indian country located within the State of South Dakota. It does not include any land held in trust by the United States for the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation or any other Indian country associated with that Tribe, which is covered under general permit SDG589###.

South Dakota: SDG589### This permit covers the Cheyenne River Reservation; Crow Creek Reservation; the Flandreau Santee Sioux Indian Reservation; the Lower Brule Reservation; the Pine Ridge Reservation (including the entire Reservation, which is located in both South Dakota and Nebraska); the Rosebud Indian Reservation; the Yankton Sioux Reservation; any land within the State of South Dakota held in trust by the United States for an Indian Tribe; and any other areas within the State of South Dakota which are Indian country within the meaning of 18 U.S.C. 1151.

This permit includes any land in the State of North Dakota that is held in trust by the United States for the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation or any other Indian country associated with that Tribe. It does not include the Standing Rock Sioux Reservation or any associated Indian country, which is covered under general permit NDG589###.

Utah: UTG589### This permit covers the Northwestern Band of Shoshoni Nation of Utah Reservation (Washakie); the Paiute Indian Tribe of Utah Reservation; the Skull Valley Indian Reservation; Indian country lands within the Uintah and Ouray Indian Reservation; any land within the State of Utah held in trust by the United States for an Indian Tribe; and any other

areas within the State of Utah which are Indian country within the meaning of 18 U.S.C. 1151, except as provided in the following paragraph.

It does not include any portions of the Navajo Nation, the Goshute Reservation, the Ute Mountain reservation in Utah, or any land held in trust by the United States for an Indian Tribe that is associated with those Reservations, or any other areas which are Indian country within the meaning of 18 U.S.C. 1151 that are associated with those Reservations.

Wyoming: WYG589### This permit covers the Wind River Reservation; any land within the State of Wyoming held in trust by the United States for an Indian Tribe; and any other areas within the State of Wyoming which are Indian country within the meaning of 18 U.S.C. 1151.

DATES: The general permits become effective on September 14, 2010 and will expire five years from that date. For appeal purposes, the 120 day time period for appeal to the U.S. Federal Courts will begin September 14, 2010.

ADDRESSES: The administrative record is available by appointment for review and copying at the EPA Region 8 offices during the hours of 10 a.m. to 4 p.m. Monday through Friday, Federal holidays excluded. To make an appointment to look at or copy the documents call Donna Roberts at 303–312–6371 or Colleen Gillespie at 303–312–6133. The Region 8 offices are located at 1595 Wynkoop Street, Denver, CO 80202–1129. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permits may be obtained from Colleen Gillespie, EPA Region 8, Wastewater Unit (8P–W–WW), 1595 Wynkoop Street, Denver, CO 80202–1129, telephone 303–312–6133 or e-mail at *gillespie.colleen@epa.gov.* The final general permits, the fact sheet, Response to Comments, and additional information may be downloaded from the EPA Region 8 Web page at *http://www.epa.gov/region8/water/wastewater/download.* Please allow one week after date of this publication for items to be uploaded to the Web page. Copies of a specific general permit, the fact sheet, and/or Response to Comments may also be obtained by writing Donna Roberts at the above address or telephone 303–312–6371.

SUPPLEMENTARY INFORMATION: Proposed reissuance of the general permits was published in the **Federal Register** on July 24, 2009, 74 FR 36705. The public comment period closed on August 24, 2009. A summary of each comment received and Region 8's response to the comments are given in a separate document, "Response to Comments Received During the 2009 Public Notice of Draft NPDES General Permits for Wastewater Lagoon Systems Located in Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.

The use of wastewater lagoon systems is the most common method of treating municipal wastewater in Indian country in Region 8. Wastewater lagoon systems are also used to treat domestic wastewater from isolated housing developments, schools, camps, missions, and similar sources of domestic wastewater that are not connected to a municipal sanitary sewer system and do not use septic tank systems. Region 8 wants to continue using general permits instead of individual permits for permitting the discharges from such facilities in order to reduce the Region's administrative burden of issuing separate individual permits. The administrative burden for the regulated sources is expected to be about the same under the general permits as with individual permits, but it will be much quicker to obtain permit coverage with general permits than with individual permits. The discharge requirements would essentially be the same with an individual permit or under the general permit.

Coverage under the general permits will be limited to those wastewater lagoon systems that meet the following criteria:

1. The wastewater lagoon system is located in Indian country in EPA Region 8;

2. The wastewater lagoon system treats primarily domestic wastewater; and

3. The wastewater lagoon system is:

a. A facility listed in Appendix A of the fact sheet; or

b. A facility not listed in Appendix A that meets the requirements specified in Part 5 of the general permit for complete retention wastewater lagoon systems.

If facilities that do not meet the criteria above seek coverage under this general permit, EPA will notify the facility that it must apply for an individual permit. The eligibility criteria above are more restrictive than those in the draft general permit that was publicly noticed on July 24, 2009.

Lagoon systems covered under the general permit will include the following three categories: (1) Lagoons where no prior notification is required before starting to discharge; (2) lagoons where prior notification is required before starting to discharge; and (3) lagoons that are required to have no discharge. The effluent limitations for lagoons coming under categories 1 and 2 are based on the Federal Secondary Treatment Regulation (40 CFR Part 133) and best professional judgement (BPJ). There are provisions in the general permits for adjusting the effluent limitations on total suspended solids (TSS) and pH in accordance with the provisions of the Secondary Treatment Regulation. If more stringent and/or additional effluent limitations are necessary to comply with applicable water quality standards, those limitations may be imposed by written notification to the permittee. Lagoon systems under category 3 are required to have no discharge except in accordance with the bypass provisions of the permit. Self-monitoring requirements and routine inspection requirements are included in the permits. The permits do not authorize the discharge of wastewater from land application sites, but they do require that the land application of wastewater from the lagoon systems be done in accordance with a written operational plan for the land application of the wastewater. The objectives of the operational plan are to minimize the potential for the discharge of wastewater from the land application site and to avoid applying excessive amounts of nitrogen to the land application site.

With the exception of the Flathead Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Ute Mountain Reservation, where the Tribes have Clean Water Act section 401(a)(1) certification authority, EPA will certify that the permits comply with the applicable provisions of the Clean Water Act as long as the permittees comply with all permit conditions. Certifications were received for the Flathead Reservation and the Northern Cheyenne Indian Reservation. No responses were received for the requests for certification for the Fort Peck Indian Reservation and the Ute Mountain Reservation and the 60-day response period has expired. Therefore EPA considers certification as being waived for those reservations in accordance with the provisions of 40 CFR 124.53(c)(3).

Other Legal Requirements

Economic Impact (Executive Order 12866): EPA has determined that the issuance of this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these proposed general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 501, *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA), 5 U.S.C 601, *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA): The RFA requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit proposed today, however, is not a "rule" subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the RFA.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" defined to be the same as "rules" subject to the RFA) on Tribal, State, local governments and the private sector. The permit proposed today, however, is not a "rule" subject to the RFA and is therefore not subject to the requirements of the UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251, *et seq.*

Dated: August 24, 2010.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. 2010–21675 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9195–6]

Proposed Cercla Administrative Order on Consent for the Standard Mine Site, Gunnison County, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(I), notice is hereby given of a proposed Administrative Order on Consent ("AOC") under sections 104, 106, 107, and 122 of CERCLA, 42 U.S.C. 9604, 9606, 9607, and 9622, between EPA and Elijah Valencia regarding the Standard Mine Site, located in Gunnison County, Colorado. The proposed AOC is for recovery of past and projected future response costs concerning the Standard Mine site in Gunnison County, Colorado with Elijah Valencia based upon ability to pay. The settlement requires the settling party to execute an environmental covenant and provide access to real property. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received on the AOC and may modify or withdraw its consent to the AOC, if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 1595 Wynkoop Street, 2nd Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before September 30, 2010.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 1595 Wynkoop Street, 2nd Floor, in Denver, Colorado 80202. Comments and requests for a copy of the proposed settlement should be addressed to John D. Works, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, and should reference the Standard Mine Site/Valencia settlement.

FOR FURTHER INFORMATION CONTACT: John D. Works, Enforcement Specialist (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6196.

It is so agreed.

Dated: August 25, 2010.

Sharon L. Kercher,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 2010–21718 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9195–1]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Sturbridge, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Town of Sturbridge, Massachusetts ("Town") for the purchase of a foreign manufactured submersible mixer to be installed in a new septage storage tank as part of a proposed wastewater treatment plant upgrade. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by Sturbridge and its consulting engineer, it has been determined that there are currently no domestic manufactured submersible mixers available to meet its proposed technical project specifications. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of a foreign manufactured submersible mixer by the Town of Sturbridge, Massachusetts, as specified in its May 25, 2010 request.

DATES: *Effective Date:* August 19, 2010.

FOR FURTHER INFORMATION CONTACT: David Chin, Environmental Engineer, (617) 918–1764, or Katie Connors, Environmental Engineer, (617) 918–1658, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(b)(2) and 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of

Section 1605(a) of Public Law 111–5, Buy American requirements, to the Town of Sturbridge, Massachusetts for the purchase of a non-domestic manufactured submersible mixer, the Landia Model POPR–1 made in Denmark, to be installed in a new septage storage tank to meet its technical design specifications as part of its proposed wastewater treatment plant upgrade.

EPA has determined that the Town's waiver request is late, but EPA will evaluate the request as if it were timely made even though the request was made after the construction contract was signed. Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, in this case EPA has determined that the Town's request, though made after the date that the contract was signed, can be evaluated as timely because a domestic submersible mixer meeting project specifications was found to be unavailable by the contractor only after the shop drawings had become available, which was after the contract date. The need for a waiver was not determined until after the contractor had completed its review and had confirmed that there were no domestic submersible mixers available to meet project specifications. Accordingly, EPA will evaluate the request as if it were timely made.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The Town of Sturbridge is proposing a major upgrade to its existing secondary treatment facility. It will include the construction of a new headworks building; renovations to the existing process and filter buildings; renovations to existing storage tanks and the construction of new storage tanks; construction of new yard piping and conduit systems; and other site improvements. The construction will take place while the existing treatment facility remains fully operational. The estimated cost of the entire wastewater treatment facility upgrade, necessary to meet more stringent effluent limits in the future and to accommodate expansion of the municipal sewer system, is approximately $16M.

According to the Town's design engineer, the corrosive nature of the septage and landfill leachate to be stored in the new septage storage tank requires that the submersible mixer be constructed entirely of stainless steel. Other prominent specifications require that the mixer be equipped with a single planetary gear box with gear reduction capability to provide increased longevity and efficiency for the submersible mixer, and require that the mixer shaft be equipped with a motor shaft sealing system comprised of three seals. Excerpts from the submersible mixer specifications document provided by the Town's design engineer include the following:

(1) Each mixer shall be of the integral-gear, close coupled, submersible type with a maximum propeller speed of 390 rpm. All components of the mixer, including the motor and gearbox, shall be manufactured of solid AISI 316 acid-proof stainless steel and provide continuous underwater operation while the mixer blades are completely submerged. No stainless steel jackets that cover a cast iron housing shall be allowed.

(2) Each mixer shall be provided with a grease chamber in the propeller hub for the shaft sealing system, and a separate oil chamber for the gearbox and mechanical seals. Drains and inspection plugs shall be provided with positive anti-leak seals and shall be accessible from the outside.

(3) Each mixer shall be provided with a sealing system consisting of three seals separating the various parts. The outer seal in the propeller hub shall be a lip seal with a stainless steel spring, sealing the propeller shaft and hub grease chamber from the mixed media, running on a stainless steel exchangeable wear bushing.

(4) The gearbox shall be a one-stage planetary reduction gear, equipped with high precision, low-loaded gears designed for infinite life and shall have a service factor of not less than 1.5.

The Town provided information on four domestic manufacturers of submersible mixers and has determined that there are currently no domestic manufacturers able to provide a submersible mixer that can meet all of the project technical specifications. The Town also identified a foreign manufacturer, Landia, Inc., in Denmark, which produces a submersible mixer, Landia Model POPR–1. According to the design engineer for the Town, it is the only submersible mixer that is equipped with a gear reduction capability and is constructed entirely of stainless steel-wetted parts meeting all project specifications. The Town has requested a waiver for the Landia submersible mixer, Model POPR–1, to be installed in the new septage storage tank.

An independent evaluation conducted by EPA's technical review team supports and confirms the Town' claim that there are currently no domestic manufacturers that can provide a submersible mixer to meet project specifications. Research and follow-up communications between EPA's national contractor and the four identified domestic manufacturers confirmed that three do not manufacture gear driven submersible mixers, and the fourth does not produce entirely stainless steel mixers. Additional research conducted by EPA's national contractor identified another domestic submersible mixer manufacturer. However, it is not able to provide a submersible mixer that meets project specifications. While this manufacturer claims that it plans to produce a submersible mixer to meet project specifications by the latter part of 2010, it does not currently do so.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' " ("Memorandum"), defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The same Memorandum defines "satisfactory quality" as "the quality of steel, iron or manufactured good specified in the project plans and designs."

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or curtail entirely projects that are "shovel ready" by requiring potential SRF eligible recipients, such as the Town of Sturbridge, to revise their design standards and specifications. To curtail entirely this construction would directly

conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by Sturbridge establishes both a proper basis to specify a particular manufactured good, and that the domestic manufactured goods that are currently available do not meet the design specifications for the proposed project. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States, the Town of Sturbridge, Massachusetts is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of a foreign manufactured submersible mixer in Sturbridge's waiver request submittal dated May 25, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605.

Dated: August 19, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010–21676 Filed 8–30–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATES: *Date and Time:* The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 8, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- August 12, 2010.

B. New Business

- Merger of the Louisiana Ag Credit ACA, and Subsidiaries with Southern AgCredit, ACA, and Subsidiaries.
- Fall 2010 Abstract of the Unified Agenda of Federal Regulatory and Deregulatory Actions and Fall 2010 Regulatory Performance Plan.
- Farm Credit Administration Revised FY 2011 and Proposed FY 2012 Budget.

Closed Session*

Reports

- OSMO Quarterly Report.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: August 27, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–21859 Filed 8–27–10; 4:15 pm]

BILLING CODE 6705–01–P

FINANCIAL CRISIS INQUIRY COMMISSION

Notice of Public Hearing

AGENCY: Financial Crisis Inquiry Commission.

ACTION: Notice.

SUMMARY: The next public hearing of the Financial Crisis Inquiry Commission (FCIC) is titled "Too Big to Fail: Expectations and Impact of Extraordinary Government Intervention and the role of Systemic Risk in the Financial Crisis." The forum will also be webcast live at *http://www.FCIC.gov.*

DATES: The hearing will be held on: Wednesday, September 1, 2010, 9 a.m. EDT; and Thursday, September 2, 2010, 9 a.m. EDT.

ADDRESSES: The hearing will be held at: Dirksen Senate Office Building, Room 538, Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Gretchen Kinney Newsom, Financial Crisis Inquiry Commission, 1717 Pennsylvania Avenue, Suite 800, Washington, DC 20006. 202–292–2799; 202–632–1604 fax.

SUPPLEMENTARY INFORMATION: The purpose of the Financial Crisis Inquiry Commission is to examine the causes, domestic and global, of the current financial and economic crisis in the United States, per the requirements of the Fraud Enforcement and Recovery Act of 2009 ("FERA"), Section 5, Public Law 111–21–123 Stat. 1617 (2009).

Public Participation: The hearing is open to the public. The Chairman of the Commission will lead the hearing for the orderly conduct of business.

Dated: August 25, 2010.

Gretchen Kinney Newsom,

Certifying Official and Special Assistant to the Chairman, Financial Crisis Inquiry Commission.

[FR Doc. 2010–21613 Filed 8–30–10; 8:45 am]

BILLING CODE 6820–RK–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Hung-Shu Chang, PhD, Washington State University: Based on the report of an investigation conducted by the Washington State University (WSU) and additional analysis by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Hung-Shu Chang, PhD, former postdoctoral fellow, WSU, engaged in research misconduct in research supported by National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), grant R01 ES012974.

PHS found that the Respondent engaged in scientific (42 CFR 50.102) and research misconduct by fabricating

and falsifying data in Figure 3 of a paper published in *Endocrinology*.[1] Specifically, PHS found that:

• Respondent, by not conducting any of the claimed bisulfite sequencing, fabricated the methylation status of CpG sites in eight candidate genes identified in both Figures 3 and 4 as No. 11, No. 12, No. 13, No. 14, 15, No. 22, No. 26, No. 31, and No. 19, to support the hypothesis that the environmental compound, vinclozolin, induces a permanent alteration in the epigenetic reprogramming of the germline that promotes transgenerational disease states.

• Respondent, by conducting only a small fraction of the claimed bisulfite sequencing, and falsifying the results obtained, falsified the methylation status of CpG sites in eight additional candidate genes, identified in Figures 3 and 4 as No. 2, 3, 24, No. 5, 6, 9, No. 8, No. 16, No. 17, 18, No. 27, 28, No. 29, and No. 33.

Dr. Chang has entered into a Voluntary Settlement Agreement in which he has voluntarily agreed, for a period of three (3) years, beginning on July 21, 2010:

(1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) that any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses him in any capacity on PHS-support research, or that submits a report of PHS-funded research in which the Respondent is involved, must concurrently submit a plan for supervision of the Respondent's duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of the Respondent's research contribution while applying for or conducting PHS-supported research. Respondent agrees to ensure that a copy of the supervisory plan is submitted to ORI by the institution for ORI approval. Respondent agrees not to participate in any PHS-supported research until such a supervisory plan is submitted to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2010–21579 Filed 8–30–10; 8:45 am]

BILLING CODE 4150–31–P

[1] Chang, H.S., Anway, M.D., Rekow, S.S., & Skinner, M.K. "Transgenerational epigenetic imprinting of the male germline by endocrine disruption exposure during gonadal sex determination." *Endocrinology* 147(12):5524–5541; hereafter referred to as the "*Endocrinology* paper."

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Health; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organizations, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Chapter AA, "Immediate Office of the Secretary," which was last amended at 75 FR 20364–65, dated April 19, 2010, and at Chapter AC, "Office of Public Health and Science (OPHS)," which was last amended at 72 FR 58095–96, dated October 12, 2007. This amendment will accomplish two tasks: (1) In Chapter AC, revise the title of the office headed by the Assistant Secretary for Health (ASH) from the "Office of Public Health and Science" to the "Office of the Assistant Secretary for Health," and; (2) add information about a new office reporting to the Assistant Secretary for Health (ASH), the "Office of Adolescent Health," established in section 1708 of the Public Health Service (PHS) Act (42 U.S.C. 300u–7), and most recently addressed in the December 8, 2009, Conference Report (House Report 111–366) accompanying the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). The changes are as follows:

A. Under Part A, Chapter AA, Section AA.10 Organization, replace the "Office of Public Health and Science (AC)" with the "Office of the Assistant Secretary for Health (AC)."

B. Under Part A generally and Part A, Chapter AC, replace all references to the "Office of Public Health and Science" with the "Office of the Assistant Secretary for Health" and all references to "OPHS" with "OASH."

C. Under Part A, Chapter AC, Section AC.10 Organization, insert "M. Office of Adolescent Health (ACR)" immediately after "L. Office of Commissioned Corps Force Management (ACQ)."

D. Under Part A, Chapter AC, Section AC.20 Functions, insert the following text immediately after item, "L. Office of Commissioned Corps Force Management (ACQ)":

M. Office of Adolescent Health (ACR)

Section ACR.00 Mission. The Director of the Office of Adolescent Health (OAH) is the principal advisor to the Assistant Secretary for Health (ASH) on health-related policy and program issues related to adolescents. These issues cut across Health and Human Services (HHS) components which provide research, services, prevention, promotion, treatment, training, education, and information dissemination related to adolescent health. OAH is responsible for implementing activities authorized by section 1708 of the Public Health Service (PHS) Act.

Section ACR.10 Organization. The Office of Adolescent Health is headed by a Director who reports to the Assistant Secretary for Health and is includes the following components:

A. Immediate Office of the Director (ACR)

B. Division of Program Development and Operations (ACR1)

C. Division of Policy, Planning, and Communications (ACR2)

Section ACR.20 Functions

1. Immediate Office of the Director (ACR). The Immediate Office of the Director (IOD) plans and directs financial management and policy development, including budget formulation and execution. The IOD also oversees legislative activities related to adolescent health, acts as a liaison on personnel management to the Office of the Assistant Secretary for Health (OASH) and the Program Support Center, and coordinates correspondence control and executive secretariat functions for OAH. The IOD also manages the day-to-day operations of OAH, plans, coordinates, monitors, and evaluates OAH grants and contracts, and ensures the appropriate exercise of delegated authorities and responsibilities.

2. Division of Program Development and Operations (ACR1). The Division of Program Development and Operations (DPDO) advises the OAH Director on the development of new programs and policies, oversees the implementation and administration of competitive grants and cooperative agreements, monitors grantee activities, evaluates the focus and impact of ongoing programs, prepares analytical reports on program trends, provides training and technical assistance for grant programs, and assesses performance of grantee operations. The Division manages the development of funding announcements and contract scopes of work and the review and award of program grants,

cooperative agreements, and contracts. The Division also provides for training of health professionals who work with adolescents, particularly nurse practitioners, physician assistants, and social workers.

3. Division of Policy, Planning, and Communications (ACR2). The Division of Policy, Planning, and Communications (DPPC) is the primary information source on adolescent health programs of OAH. The Division: advises the OAH Director on policy issues; manages information, education and awareness activities and media and press relations; develops and coordinates strategic plans and special initiatives; oversees public health information and performance measurement; and coordinates and promotes OAH programs and policies. DPPC oversees and directs the OAH's communication programs, consistent with the policies of the HHS Assistant Secretary for Public Affairs. This Division also coordinates, develops, researches, and prepares briefing materials on adolescent health for the OAH Director and other HHS offices.

E. Under Part A, Chapter AC, Section AC.10 Organization, replace all references to the "Office of the President's Council on Physical Fitness and Sports (ACE)" with the "Office of the President's Council on Fitness, Sports and Nutrition (ACE)" and all references to the "President's Council on Physical Fitness and Sports" with the "President's Council on Fitness, Sports and Nutrition."

F. Under Part A, Chapter AC, Section AC.20 Functions, Paragraph A, "The Immediate Office (ACA)," insert the following after "(18)":

(19) leads and coordinates public health activities that addresses health disparities related to sexual orientation.

Dated: July 29, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–21695 Filed 8–30–10; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "AHRQ Grants Reporting System (GRS)." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by November 1, 2010.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

AHRQ Grants Reporting System (GRS)

AHRQ seeks to renew the Agency's Grants Reporting System (GRS), a systematic method for its grantees to report project progress and important preliminary findings for grants funded by the Agency. This system was first approved by OMB on November 10th, 2004 (OMB Control Number 0935–0122). The system addressed the shortfalls in the previous reporting process and established a consistent and comprehensive grants reporting solution for AHRQ. The GRS provides a centralized repository of grants research progress and additional information that can be used to support initiatives within the Agency. This includes future research planning and support to administration activities such as performance monitoring, budgeting, knowledge transfer as well as strategic planning.

The overall intent of the GRS project is to establish and document a systematic process that provides grantees with the ability to submit critical information in a timely manner throughout the lifecycle of a grant. In addition, the GRS project includes an infrastructure that is scalable and flexible to support information exchange throughout the Agency.

The GRS is based on a review of the previous processes that supported the solicitation and submission of data associated with patient safety grants. Following this review, a recommended process was prepared and presented to AHRQ stakeholders. The project team developed an initial system that addresses the immediate needs of the stakeholder community.

The project team, in conjunction with the stakeholder community will establish follow-on activities which will expand the capabilities of the initial system to meet the longer term goals of the project as directed by the executive management team of the agency. The specific activities that were accomplished in the short term and those established for the longer term are outlined below.

Short-Term Objectives

The following initial objectives for the GRS project have been:

- Establish and document a systematic process which supports the voluntary reporting of project progress and important preliminary findings associated with patient safety research grants.
- Collect, document, and prioritize the long-term objectives of the GRS.
- Establish an infrastructure that satisfies the short-term objectives of the project and can be leveraged to meet the long-term objectives and anticipated expansion.
- Establish an automated user-friendly resource that will be used by grantees, regardless of mechanism, for reporting to AHRQ.
- Establish an automated user-friendly resource that will be utilized by Agency staff for preparing, distributing, and reviewing reporting requests to patient safety grantees.
- Ensure that the necessary security requirements are established and implemented in order to maintain the intellectual property or publication rights of grantees.
- Establish a solution that is consistent with the AHRQ enterprise architecture model and aligned with AHRQ systems development standards.

Long-Term Objectives

The AHRQ project team will continue to enhance the GRS to establish a single, common reporting system for research related activities by:

- Enhancing the initial system as necessary to accommodate features not addressed by the short-term solution.
- Modifying the short-term solution to address new requirements and refine existing functionality for use across the agency for other programs and mechanisms.
- Expanding the deployment of the system to accommodate additional

grants programs and other agency information exchange mechanisms.

Method of Collection

Grantees are required to enter data related to the progress of their grant funded research quarterly through a secure online interface which requires a user id and password.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents. It will take grantees an estimated 10 minutes to enter the necessary data into the Grant Reporting System (GRS) and reporting will occur four times annually. The total annualized burden hours are estimated to be 333 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents. The total estimated cost burden for respondents is $11,159.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Data entry into GRS	500	4	10/60	333
Total	500	na	na	333

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Data entry into GRS	500	333	$33.51	$11,159
Total	500	333	na	11,159

* Based upon the average wages for Healthcare Practitioner and Technical Occupations (29–0000), "National Compensation Survey: Occupational Wages in the United States, May 2009," U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The annual cost to the government is $100,000 for licensing, support and maintenance.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 16, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–21501 Filed 8–30–10; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Avoiding Readmissions in Hospitals Serving Diverse Patients." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on June 21st, 2010 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by September 30, 2010.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Avoiding Readmissions in Hospitals Serving Diverse Patients

An important part of AHRQ's mission is to disseminate information and tools that can support improvement in quality and safety in the U.S. health care community. The transition process from the hospital to the outpatient setting is nonstandardized and frequently inadequate in quality. One in five hospital discharges is complicated by an adverse event (AE) within 30 days, often leading to an emergency department visit and/or rehospitalization. Many

readmissions stem from errors that can be directly attributed to the discontinuity and fragmentation of care at discharge. High rates of low health literacy, lack of coordination in the "hand-off" from the hospital to community care, gaps in social supports, and other limitations also contribute to the risk of rehospitalization.

Boston University Medical Center (BUMC), through a grant from AHRQ, previously defined the discharge process and determined what improvements could be made to improve this care transition for patients. This new process was called the "re-engineered discharge" (RED). The RED consists of 11 elements, including educating the patient throughout the hospital stay, making follow-up appointments, and giving the patient a written discharge plan. The RED was tested in a randomized controlled trial in an academic safety net hospital at BUMC with English speaking, general medical patients being discharged to home or community settings. Results of this trial of 749 patients showed a reduction in rehospitalizations within 30 days and emergency department visits following hospital discharge. Participants also followed up with primary care providers more often and reported higher patient satisfaction with the discharge process. Project RED researchers created several tools to help hospitals replicate RED. After AHRQ and Project RED researchers fielded many inquiries about how to implement Project RED at hospitals nationwide, AHRQ realized that the Project RED Toolkit did not provide sufficient guidance to potential replicators. Various components of the RED were not documented, and issues regarding implementing the RED at hospitals serving linguistically and culturally diverse patient populations had not been addressed. AHRQ has therefore contracted with the RED researchers to create a revised RED Toolkit that will address these issues.

This proposed information collection supports AHRQ's mission by improving upon the RED Toolkit. This project has the following 2 goals:

(1) To pre-test the revised RED Toolkit in ten varied hospital settings, evaluating how the RED Toolkit is implemented in varied hospital settings by: (a) Documenting the implementation process; (b) assessing the fidelity of implementation; and (c) identifying the factors that affect redesign fidelity, including intensity of technical assistance (TA).

(2) To modify the revised RED Toolkit based on pre-testing and to disseminate it.

BUMC will provide TA at two varying levels. Four selected hospitals will receive "train-the-trainer" TA, which includes:

(1) Telephone assistance in conducting a baseline needs assessment;

(2) Master trainer training;

(3) Access to webinar trainings specifically designed for each user (nurse, IT professional, hospital leadership, and pharmacist);

(4) An electronic template to print an After Hospital Care Plan (AHCP) booklet; and

(5) E-mails regarding updates to the RED Web site and the opportunity to ask questions about the newly revised and enhanced RED tools and implementation via telephone and e-mail.

Six selected hospitals will receive intensive TA, which includes:

(1) Telephone baseline needs assessment;

(2) On-site training;

(3) Monthly semi-structured interviews via phone calls with the implementation team to discuss implementation efforts and barriers;

(4) Adaptation of the revised RED Toolkit to include specific details about the hospital (such as the hospital name on the cover of the AHCP booklet and hospital-specific services provided to patients included in the AHCP booklet);

(5) An assessment and evaluation site visit by the organizational change evaluator (a member of the implementation team), at baseline and 12 months after the start of implementation efforts to interview select participating hospital staff;

(6) IT support to install and support the RED Toolkit software to automatically generate the AHCP booklet; and

(7) E-mails regarding updates to the RED Web site and the opportunity to ask questions about the newly revised and enhanced RED tools and implementation via telephone and e-mail.

A diverse group of hospitals will be selected to receive each level of TA, based upon hospital size, location, readmission rate and patient population. Implementing the revised RED Toolkit in diverse settings will provide a better understanding of whether and how RED can be best implemented in different hospital settings.

The project will be framed within a model of organizational change and transformation called the Organizational Transformation Model (OTM), which is based on the evaluation of Robert Wood Johnson Foundation's Pursuing Perfection initiative. OTM identifies key elements that drive dramatic system change and informs the implementation process and impact evaluation. Using a mixed-methods design, the evaluation tracks change over time and across the implementation period within each hospital. The evaluation therefore will encompass feedback on specific implementation processes and factors in microsystems where RED is adopted, in the larger organizational context, and interactions between the two.

This research study is being conducted by AHRQ through its contractor, BUMC, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and disseminate information on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299(b) and 299a(a)(1) and (2).

Method of Collection

To achieve the projects' goals, the following data collections and training will be implemented for the six hospitals that will receive intensive TA as well as the 4 hospitals receiving train-the trainer TA, unless otherwise noted:

(1) Baseline needs assessment to help each hospital plan and prepare for implementation of the revised RED Toolkit and to evaluate it in varied settings (*see* Attachment C). This is not a data collection but will impose a time burden on the participating hospitals as they prepare to participate in this project. The purpose of the needs assessment is for the hospital to become familiar with their discharge process and what parts of the process are being done well and what parts of the process need improvement. In order to implement the new RED discharge process, it is important for a hospital to plan how they will do this. This information will be shared during the baseline key contact semi-structured interview.

(2) Baseline key contact semi-structured interviews will be administered by telephone, approximately two months prior to implementation, to the key contact at each of the ten study hospitals (*see* Attachment D). The purpose of the interview is to identify the implementation team, collect some basic information about the hospital, such as the number of beds and if electronic medical records are used, and

to establish the baseline readmission rate.

(3) Monthly semi-structured interviews with the key contact or other implementation team member will be conducted monthly for 12 months after implementation (*see* Attachment E). These interviews will be conducted by phone with each of the six hospitals receiving intensive technical assistance (TA) (the two levels of TA are described above). The purpose of these interviews are to allow hospitals to share their experiences with implementing the revised RED Toolkit, their use of specific tools, changes resulting from using the tools and problems encountered implementing the revised RED Toolkit and how they are being addressed.

(4) Baseline semi-structured interviews will be conducted prior to the implementation of the revised RED Toolkit with 15 hospital staff from each of the six study hospitals receiving intensive TA (*see* Attachment F). The purpose of this interview is to measure the staff's opinion of the current discharge process, their perceived need for a redesigned process, and the perceived barriers and facilitators to redesigning the discharge process.

(5) Post implementation semi-structured interviews will be conducted 12 months after the implementation of the revised RED Toolkit with 15 hospital staff from each of the six study hospitals receiving intensive TA (*see* Attachment G). The purpose of this interview is to measure the staff's opinion of the redesigned discharge process, which tools were used and their opinion of the tools, and the observed barriers and facilitators to redesigning the discharge process.

(6) Patient surveys will be administered by telephone to a random sample of patients 30 days after being discharged from one of the six intensive TA study hospitals (*see* Attachment H). The purpose of this survey is to measure patient outcomes, including satisfaction with the care they received, 30-day hospital and emergency department visits, and physician appointments, to help determine the success of the RED Toolkit implementation in diverse patient populations. The survey will be administered by a hospital staff member to patients during the pre-implementation period and again during the post-implementation period to compare patient outcomes.

(7) Medical record review of patient outcomes at all ten study hospitals (*see* Attachment I). This data collection will be conducted both pre- and post-implementation of the revised RED Toolkit and will inform the success of the revised RED Toolkit implementation in diverse patient populations. Outcomes to be collected include process outcomes, such as primary care provider appointments scheduled prior to discharge, and patient outcomes, such as 30-day hospital and emergency department visits.

(8) Master trainer training will be conducted with 3 staff members from each of the 4 hospitals receiving train-the-trainer TA (*see* Attachment J). These people will be trained to administer the RED Toolkit and be able to use recorded webinar training sessions within their organization. They will be invited to travel to BUMC for a 2-day onsite orientation of the RED intervention. These people will meet with several members of the BUMC implementation team (physician leader, discharge advocate nurse) and will have the opportunity to shadow the nurse discharge advocates in conducting the RED intervention.

(9) Intensive training will be conducted with about 28 staff from each of the 6 hospitals receiving intensive TA (*see* Attachment K). The training will consist of a two-day on-site orientation and training at each hospital conducted by the BUMC implementation team. The BUMC implementation team will consist of a physician researcher, a discharge advocate nurse, an organizational change champion/evaluator and the information technology expert. The BUMC team will spend two days, 8 hours per day, to train the relevant hospital staff to perform the 11 components of the RED discharge. The training will include material for senior hospital management, hospital physicians, nurses, IT staff, and pharmacists.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours associated with the respondent's time to participate in this research. The baseline needs assessment will be conducted by staff at each of the 10 participating hospitals and takes about 8 hours to complete. Baseline key contact semi-structured interviews will be conducted with the key contact at each hospital and requires 1 hour to complete. Monthly semi-structured interviews with the key contact or other implementation team member will be conducted monthly for 12 months after implementation. These interviews will be conducted by phone with each of the six hospitals receiving intensive TA and will require 1 hour to complete. Both the base-line and post-implementation semi-structured interviews will be conducted with 15 staff members from each of the 6 hospitals receiving intensive TA and will last about one hour. The patient survey will be administered twice, pre and post implementation, to 3,108 patients recently discharged from one of the 6 hospitals receiving intensive TA and requires 10 minutes to complete. The patient survey will be administered by the hospital staff and will require 10 minutes of their time to administer. Medical record review will be performed at all 10 participating hospitals both pre and post implementation and will take about 41.6 hours. Master trainer training will be conducted with 3 staff members from each of the 4 hospitals receiving train the trainer TA and will last 16 hours. Intensive training will be conducted with about 28 staff members from each of the 6 hospitals receiving intensive TA and will also last 16 hours. The total annualized burden is estimated to be 6,126 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in this research. The total annualized cost burden is estimated to be $194,163.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Baseline needs assessment	10	1	8	80
Baseline key contact semi-structured interview	10	1	1	10
Monthly semi-structured interview	6	12	1	72
Baseline semi-structured interview	6	15	1	90
Post implementation semi-structured interview	6	15	1	90
Patient survey	3,108	2	10/60	1,036

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Administration of patient survey by hospital staff	6	1,036	10/60	1,036
Medical record review	10	2	41.6	832
Master trainer training	4	3	16	192
Intensive training	6	28	16	2,688
Total	3,172	na	na	6,126

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Baseline needs assessment	10	80	[a] $41.94	$3,355
Baseline key contact semi-structured interview	10	10	[b] 51.91	519
Monthly semi-structured interviews	6	72	[c] 40.91	2,946
Baseline semi-structured interview	6	90	[d] 38.51	3,466
Post implementation semi-structured interview	6	90	[e] 38.51	3,466
Patient survey	3,108	1,036	[f] 20.32	21,052
Administration of patient survey by hospital staff	6	1,036	[b] 31.31	32,437
Medical record review	10	832	[g] 17.32	14,410
Master trainer training	4	192	[h] 31.31	6,012
Intensive training	6	2,688	[i] 40.91	109,966
Total	3,172	6,126	na	194,163

* Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States May 2008, "U.S. Department of Labor, Bureau of Labor Statistics."

(a) 75% Nurses (29–1111, $31.31/hr), 20% Physicians (29–1069, $79.33/hr) and 5% General and Operations Managers (29–1069, $51.91/hr).

[b] 100% General and Operations Managers (29–1069, $51.91/hr).

[c] 80% Nurses and 20% Physicians.

[d] and [e] 85% Nurses and 15% Physicians.

[f] 100% General public (00–0000, $20.32/hr).

[g] 100% Statistical assistants (439111, $17.32/hr).

[h] 100% Nurses.

[i] 80% Nurses and 20% Physicians.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost over the 18 months of this clearance. The total cost is $449,976.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annual cost
Project RED Toolkit Development	$97,413	$64,942
Dissemination Planning and Support	98,080	65,387
Data Collection Activities	84,563	56,375
Data Processing and Analysis	52,215	34,810
Publication of Results	3,184	2,123
Project Management	28,892	19,261
Overhead	85,629	57,086
Total	449,976	299,984

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 20, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–21503 Filed 8–30–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day 10–10GP]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov.*

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 a 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 clarify of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Clostridium difficile Infection (CDI) Surveillance—New—National Center for Emerging and Zoonotic Infectious Diseases, (NCEZID), Centers for Disease Control and Prevention, (CDC).

Background and Brief Description

Steady increases in the rate and severity of *Clostridium difficile* infection (CDI) indicate a clear need to conduct longitudinal assessments of the impact of CDI in the United States. *C. difficile* is an anaerobic, spore-forming, gram positive bacillus that produces two pathogenic toxins: A and B. CDI ranges in severity from mild diarrhea to fulminant colitis and death. Transmission of *C. difficile* occurs primarily in healthcare facilities, where environmental contamination by *C. difficile* spores and exposure to antimicrobial drugs are common. No longer limited to healthcare environments, community-associated CDI is the focus of increasing attention. Recently, several cases of serious CDI have been reported in what have been considered low-risk populations, including healthy persons living in the community and peri-partum women.

The surveillance population will consist of persons residing in the catchment area of the participating Emerging Infections Program (EIP) sites. This surveillance poses no more than minimal risk to the study participants as there will be no interventions or modifications to the care study participants receive. EIP surveillance personnel will perform active case finding from laboratory reports of stool specimens testing positive for *C. difficile* toxin and abstract data on cases using a standardized case report form. For a subset of cases (*e.g.,* community-associated *C. difficile* cases) sites will administer a health interview. Remnant stool specimens from cases testing positive for *C. difficile* toxin will be submitted to reference laboratories for culturing, and isolates will be sent to CDC for confirmation and molecular typing. Outcomes of this surveillance project will include the population-based incidence of community- and healthcare-associated CDI, and a description of the molecular characteristics of *C. difficile* strains and the epidemiology of this infection among the population under surveillance.

For this proposed data collection, there is no cost to respondents other than their time. An estimated total of 8,750 CDI Surveillance Case Report Forms (CRFs) will be completed during a one-year study period. Approximately 4,370 cases will require a completed CRF taking one hour; the remaining 4,380 cases will only require a partially completed CRF taking 15 minutes. An estimated total of 500 CDI Surveillance Health Interviews (HI) will need to be completed for the same time period. The estimated time to complete the HI is 45 minutes. Therefore, the total estimated annualized burden for this data collection is 5,840 hours.

The proposed surveillance for CDI through the Emerging Infections Program will expand CDC capacity to monitor incidence of *C. difficile* in community and healthcare settings as well as to monitor and detect antimicrobial resistance. This activity supports the HHS Action Plan for elimination of healthcare-associated infections.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
CDI Surveillance Case Report Form—Complete	10	437	1	4,370
CDI Surveillance Case Report Form—Partial	10	438	15/60	1,095
CDI Surveillance Health Interview	10	50	45/60	375
Total				5,840

Dated: August 25, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–21737 Filed 8–30–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–10–0798]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Health Marketing (OMB No. 0920–0798, exp. 01/31/2011)—Extension—Office of the Associate Director for Communication (OADC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Today, CDC is globally recognized for conducting research and investigations and for its action oriented approach. CDC applies research and findings to improve people's daily lives and responds to health emergencies—something that distinguishes CDC from its peer agencies.

CDC is committed to achieving true improvements in people's health. To do this, the agency is defining specific *health protection goals* to prioritize and focus its work and investments and measure progress.

It is imperative that CDC provide high-quality timely information and programs in the most effective ways to help people, families, and communities protect their health and safety. Through continuous consumer feedback, prevention research, and public health information technology, we identify and evaluate health needs and interests, translate science into actions to meet those needs, and engage the public in the excitement of discovery and the progress being made to improve the health of the Nation. In our outreach to partners, we build relationships that model shared learning, mutual trust, and diversity in points of view and sectors of society.

OADC is requesting a 3-year extension of OMB 0920–0798, Health Marketing, to provide feedback on the development, implementation and satisfaction regarding public health services, products, communication campaigns and information. The information will be collected using standard qualitative and quantitative methods such as interviews, focus groups, and panels, as well as questionnaires administered in person, by telephone, by mail, by e-mail, and online. More specific types of studies may include: User experience and user-testing; concept/product/package development testing; brand positioning/identity research; customer satisfaction surveying; ethnography/observational studies; and mystery shopping. The data will be used to provide input to the development, delivery and communication of public health services and information at CDC and to address emerging programmatic needs.

Every National Center and Office at CDC will have the opportunity to utilize this generic clearance. There is no cost to the respondents other than their time. The total estimated burden hours are 11,250.

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
CDC Partners, Public Health Professionals, Health Care Professionals, General Public	25,000	1	27/60

Dated: August 24, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–21736 Filed 8–30–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–10–0736]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Human Smoking Behavior Study—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cigarettes have been ranked as full-flavor, light or ultralight on the basis of machine-measured levels of smoke toxins (yield categories). The machine-based methods approximate human smoking patterns under controlled conditions but may not accurately reflect conditions of actual use, moreover, public health data have not consistently shown differences in health outcomes among smokers of cigarettes of different machine-smoked yield categories.

In 2007, the Centers for Disease Control and Prevention (CDC) received OMB approval for a research study designed to elucidate patterns of human smoking behavior, quantify biomarkers of exposure to smoke toxins under conditions of actual use, and assess how smoking behavior modifies the relationship between cigarette yield category, biomarkers of exposure, and measures of cardiovascular reactivity (OMB No. 0920–0736, exp. 3/31/2010). The study was initiated collaboratively by the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) and the National

Center for Environmental Health (NCEH). Information was collected from adult smokers of full-flavor, light and ultralight cigarettes, however, the target number of respondents was not achieved during the initial project period.

CDC requests OMB approval to reinstate the information collection in order to meet recruitment goals and complete the data analysis as planned. Changes include a reduction in the number of respondents and a corresponding reduction in the total estimated burden hours. In addition, minor changes will be made to account for changes in cigarette labels, which no longer use descriptors such as full-flavor, light or ultralight. There are no changes to the data collection instruments or the estimated burden per response.

Respondents will be asked to participate in a descriptive study of smoking behavior that involves two laboratory visits. Established smokers who are interested in participating will be screened for eligibility during a brief five-minute computer-assisted telephone interview (CATI). We estimate screening approximately 150 individuals annually to yield complete data collection on the annualized goal of 61 respondents. After completing the CATI, individuals who express continued interest in study participation will undergo five additional minutes of eligibility screening at the first laboratory visit.

Each respondent who enrolls in the study will make two one-hour visits to an assessment laboratory. The visits will occur on two consecutive days: Visit 1 will be scheduled in the morning of the first day, and Visit 2 will be scheduled in the afternoon of the second day. Samples, measurements, and behavioral information will be collected at each visit. Visit 1 will include biologic sample collection (urine, saliva, breath carbon monoxide), smoking behavior of smoking one cigarette, ventilation hole blocking procedure and breath measurements. Visit 2 will include discussion of quit opportunities if requested, biologic sample collection (urine, saliva, breath carbon monoxide), smoking behavior of smoking one cigarette, ventilation hole blocking procedure and breath measurements. In addition, at Visit 2, each respondent will submit the cigarette butts of all cigarettes smoked since Visit 1 and a completed Smoking Diary Form. The estimated burden for the Smoking Diary Form is ten minutes.

The goals of this project are to characterize the range of human smoking behavior for a variety of cigarette categories and machine-smoked yields, and to estimate the levels of biomarkers of exposure with the various cigarette styles.

OMB approval is requested for two years. Participation in the study is voluntary. There are no costs to respondents other than their time. The total estimated burden hours are 151.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adult Smokers	CATI Screener	150	1	5/60
	Visit 1 Screener	70	1	5/60
	Smoking Diary	61	1	10/60
	Laboratory Visit	61	2	1

Dated: August 23, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–21723 Filed 8–30–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0417]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study of Format Variations in the Brief Summary of Direct-to-Consumer Print Advertisements

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Experimental Study of Format Variations in the Brief Summary of Direct-to-Consumer (DTC) Print Advertisements (ads). This study is designed to test different ways of presenting benefit and risk information in the brief summary in DTC print ads.

DATES: Submit either electronic or written comments on the collection of information by November 1, 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: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov*.

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 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.

Experimental Study of Format Variations in the Brief Summary of Direct-to-Consumer Print Advertisements—New

Section 502(n) of the Federal Food, Drug, and Cosmetic Act specifies that ads for prescription drugs and biological products must provide a true statement of information "in brief summary" about the advertised product's "side effects, contraindications, and effectiveness." The prescription drug advertising regulations (§ 202.1(e)(3)(iii) (21 CFR 202.1(e)(3)(iii))) specify that the information about risks must include *each specific side effect and contraindication* from the advertised drug's FDA-approved labeling, including the Warnings, Precautions, Adverse Reactions, and other relevant sections. Some of the current approaches to fulfilling the brief summary requirement, while adequate from a regulatory perspective, result in ads that may be difficult to read and understand when used in consumer-directed promotion.

In recent years, FDA has become concerned about the adequacy of the brief summary in DTC print advertisements for prescription drugs. Because the regulations do not specify how to address each risk, sponsors can use discretion in fulfilling the brief summary requirement under § 202.1(e)(3)(iii). Frequently, sponsors print in small type, verbatim, the risk-related sections of the approved product labeling (also called the package insert, professional labeling, prescribing information, and direction circular). This labeling is written for health professionals, using medical terminology. While adequate to fulfill the brief summary requirement for print advertisements, this method may not be the most ideal. Research has shown that while many consumers will make the effort to read the brief summary in prescription drug print advertisements if they are especially interested in the drug, as a general rule consumers typically read little or none of the brief summary information.[1] Health practitioners themselves have indicated they often have difficulty finding information they actively seek in package inserts (see 65 FR 80733 at 81082, December 22, 2000, for a discussion of studies supporting the use of a highlights section in physician labeling). There may be other ways to fulfill this requirement that improve consumers' ability to find and comprehend the information in this important document.

There is evidence suggesting that both information content and the format in which it is presented will impact comprehension. For instance, research with the format of over-the-counter (OTC) drug (OTC) drug labels,[2] the nutrition facts label,[3] and other information formats[4] demonstrates that information presented with section headings, graphics (such as bullets), and other design elements is more easily read than information presented in paragraph format.

Research conducted by FDA and others has examined the content and format of the brief summary specifically. For instance, FDA conducted a series of relevant studies (OMB control numbers 0910–0591 and 0910–0611). Schwartz, Woloshin, and Welch have compared one format for adding quantitative and qualitative benefit and risk information to the brief summary.[5] Specifically, Schwartz et al. designed a prescription drug facts box similar in format to the Nutrition Facts panel and OTC Drug Facts panel. The box contains a number of elements, including qualitative and quantitative (both absolute frequency and absolute difference) information about benefits and risks. This study showed that consumers who were provided efficacy information in a prescription drug facts box were more likely to correctly choose the product with the higher efficacy than consumers who saw the brief summary using medical language from the prescribing information. However, it is unclear which elements of the drug facts box are necessary to improve consumer understanding. For instance, it is not known whether simply adding efficacy rate information to a consumer-friendly brief summary would be sufficient to enable consumers to understand a product's efficacy, or whether qualitative summations are necessary as well.

The current study will add to previous research by systematically examining these different elements to determine whether and how to add qualitative and quantitative benefit and risk information to the brief summary. The results of this study will inform FDA of the usefulness and parameters of various format and content options for the brief summary.

Design Overview: This study will be conducted in two concurrent parts; one examining variations on the benefit information presented in DTC print advertisements and the other examining variations on the risk information presented in DTC print advertisements. The factors studied will be the type of information (i.e., the addition of quantitative and qualitative information in a box format) and the level of efficacy or risk. We will vary the level of efficacy and risk such that the largest effect is noticeably different from the placebo, whereas the smallest effect is minimally different from the placebo. These factors will be combined in a factorial design as follows:

[1] Aikin, K.J., Swasy, J.L. and Braman, A.C. (2004). Patient and Physician Attitudes and Behaviors Associated with DTC Promotion of Prescription Drugs: Summary of FDA Survey Research Results, Final Report. Available at *http://www.fda.gov/cder/ddmac/Final%20Report/FRfinal111904.pdf*. Last accessed March 26, 2009.

[2] Aikin, K.J. (1998). Consumer Comprehension and Preference for Variations in the Proposed Over-The-Counter Drug Labeling Format, Final Report; Vigilante, W.J. & Wogalter, M.S. (1997). The preferred order of overt-the-counter (OTC) pharmaceutical label components. *Drug Information Journal*, *31*, 973–988.

[3] Levy, A.S., Fein, S.B. & Schucker, R.E. (1992). More effective nutrition label formats are not necessarily more preferred. *Journal of the American Dietetic Association*, *92*(10), 1230–1234.

[4] Lorch, R. & Lorch, E. (1995). Effects of organizational signals on text-processing strategies. *Journal of Educational Psychology*, *87*(4), 537–544; Lorch, R. & Lorch, E. (1996). Effects of organizational signals on free recall of expository text. *Journal of Educational Psychology*, *88*(1), 38–48; Lorch, R., Lorch, E. & Inman, W. (1993). Effects of signaling topic structure on text recall. *Journal of Educational Psychology*, *85*(2), 281–290.

[5] Schwartz, L.M., Woloshin, S., & Welch, H.G. (2009). Communicating drug benefits and harms with a drug facts box: Two randomized trials. Annals of Internal Medicine, 150(8). Available online at *http://www.annals.org/cgi/content/full/0000605-200904210-00106v1*. Last accessed March 26, 2009.

TABLE 1.—PROPOSED DESIGN (4 X 5 + 2)

Information Type	Efficacy Level				
	Smallest Effect	Smaller Effect	Mid-Size Effect	Larger Effect	Largest Effect
Absolute Frequency	81% vs. 82%	61% vs. 82%	41% vs. 82%	21% vs. 82%	1% vs. 82%
Absolute Frequency + Qualitative Label	Fewer 81% vs. 82%	Fewer 61% vs. 82%	Fewer 41% vs. 82%	Fewer 21% vs. 82%	Fewer 1% vs. 82%
Absolute Difference + Qualitative Label	Fewer (1%)	Fewer (21%)	Fewer (41%)	Fewer (61%)	Fewer (81%)
Absolute Frequency + Absolute Difference + Qualitative Label	Fewer (1%) 81% vs. 82%	Fewer (21%) 61% vs. 82%	Fewer (41%) 41% vs. 82%	Fewer (61%) 21% vs. 82%	Fewer (81%) 1% vs. 82%

Note. Two other cells will be tested: (1) No information and (2) Qualitative label only (fewer). This design (22 cells) will also be used to test risk information (for a total of 44 cells). The specific numbers in the table are placeholders only. Qualitative label example: "fewer people taking drug X had disease/symptom Y."

The test product will be for the treatment of high prevalence medical condition and modeled on an actual drug used to treat that condition. Participants will be consumers who have been diagnosed with the medical condition of interest. They will be randomly assigned to read one ad version. After reading the ad, participants will answer a series of questions about the drug. We will test how the information type affects perceived efficacy, perceived risk, behavioral intention, and accurate understanding of the benefit and risk information.

Interviews are expected to last no more than 20 minutes. A total of 11,750 participants will be involved in the study. This will be a one-time (rather than annual) collection of information.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretest	750	1	750	20 minutes	250
Main Study	11,000	1	11,000	20 minutes	3,667
Total					3,917

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 25, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–21629 Filed 8–30–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0084]

Determination of Regulatory Review Period for Purposes of Patent Extension; PRISTIQ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PRISTIQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: 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 PRISTIQ (desvenlafaxine sucinate). PRISTIQ is indicated for treatment of major depressive disorder. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PRISTIQ (U.S. Patent Nos. 6,673,838 and 7,291,347) from Wyeth, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 17, 2010, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PRISTIQ 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 PRISTIQ is 2,124 days. Of this time, 1,324 days occurred during the testing phase of the regulatory review period, while 800 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*: May 9, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 9, 2002.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: December 22, 2005*. The applicant claims December 22, 2005, as the date the new drug application (NDA) for PRISTIQ (NDA 21–966) was initially submitted. However, FDA records indicate that the application initially submitted for PRISTIQ was NDA 21–992 and FDA has confirmed that NDA 21–992 was initially submitted on December 22, 2005.

3. *The date the application was approved*: February 29, 2008. FDA has verified the applicant's claim that PRISTIQ was approved on February 29, 2008. However FDA records indicate that it was NDA 21–992 that was approved.

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 applications for patent extension, this applicant seeks 17 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**) either electronic or written comments and ask for a redetermination by November 1, 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 [*insert date 180 days after date of publication in the* **Federal Register**]. 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.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document. Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–21586 Filed 8–30–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–E–0061]

Determination of Regulatory Review Period for Purposes of Patent Extension; ONGLYZA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ONGLYZA 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 electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: 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 ONGLYZA (saxagliptin). ONGLYZA is indicated as an adjunct to diet and exercise to

improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ONGLYZA (U.S. Patent No. 6,395,767) from Bristol-Myers Squibb Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 3, 2010, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ONGLYZA 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 ONGLYZA is 2,794 days. Of this time, 2,397 days occurred during the testing phase of the regulatory review period, while 397 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*: December 8, 2001. The applicant claims November 8, 2001, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 8, 2001, 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 30, 2008. FDA has verified the applicant's claim that the new drug application (NDA) for ONGLYZA (NDA 22–350) was submitted on June 30, 2008.

3. *The date the application was approved*: July 31, 2009. FDA has verified the applicant's claim that NDA 22–350 was approved on July 31, 2009.

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 896 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**) either electronic or written comments and ask for a redetermination by November 1, 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 [*insert date 180 days after date of publication in the* **Federal Register**]. 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.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document. Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–21583 Filed 8–30–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0431]

Draft Guidance for Food and Drug Administration Staff and Tobacco Retailers on Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers." This guidance document is intended to describe FDA's current policies with respect to civil money penalties and no-tobacco-sale orders for retailers who violate requirements of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) relating to tobacco products, including the FD&C Act requirement that tobacco products may not be sold or distributed in violation of FDA's "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents." When this guidance document is final, several provisions in the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) that relate to civil money penalties and no-tobacco-sale orders will become effective.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 1, 2010.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers" to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerie A. Voss, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373, *gerie.voss@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for FDA Staff and tobacco retailers entitled "Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers." On June 22, 2009, President Obama signed the Tobacco Control Act (Public Law 111–31) into law . The Tobacco Control Act grants FDA important new authority to regulate the manufacture, marketing and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Among its many provisions, the Tobacco Control Act authorizes FDA to impose civil money penalties for violations of FD&C Act requirements that relate to tobacco products (section 303(f)(9) of the FD&C Act (21 U.S.C. 333

(f)(9)). Of special interest to retailers, one of the FD&C Act's requirements is that tobacco products may not be sold or distributed in a manner that violates regulations issued under section 906(d) of the FD&C Act, such as the "Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents" that were published by FDA in the **Federal Register** of March 19, 2010 (75 FR 13225) (21 CFR part 1140). The Tobacco Control Act also authorizes FDA to impose a no-tobacco-sale order on a retail outlet for repeated violations of regulations issued under section 906(d) of the FD&C Act, and discusses a number of technical and procedural issues relating to civil money penalties and no-tobacco-sale orders.

The draft guidance document describes the penalty structure and draft FDA policies with respect to civil money policies and no-tobacco-sale orders. When this guidance is final, several Tobacco Control Act provisions that relate to civil money penalties and no-tobacco-sale orders will become effective (section 103(q)(3) of the Tobacco Control Act).

II. Significance of Guidance

FDA is issuing this draft guidance document as a level 1 draft guidance consistent with FDA's good guidance practices regulation (§ 10.115 (21 CFR 10.115)). The draft guidance, when finalized, will represent the agency's current thinking on "Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (See **ADDRESSES**), electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/TobaccoProducts/GuidanceCompliance RegulatoryInformation/default.htm* or *http://www.regulations.gov*.

Dated: August 26, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–21661 Filed 8–30–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Alcohol.

Date: September 29, 2010.

Time: 1 p.m. to 3 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: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892. 301–435–1119. *mselmanoff@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Tumor Microenvironment Study Section.

Date: October 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, Washington, DC, 1150 22nd Street, NW., Washington, DC, 20037.

Contact Person: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892. (301) 451–4467. *choe@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry A Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 12 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: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892. 301–435–1728. *radtkem@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Washington, DC, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: Boris P Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892. 301–408–9115. *bsokolov@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Cancer Etiology Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892. 301–435–1779. *riverase@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Cancer Genetics Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Steven F. Nothwehr, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5183, MSC 7840, Bethesda, MD 20892. 301.408.9435. *nothwehrs@mail.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Pathobiology of Kidney Disease Study Section.

Date: October 7, 2010.

Time: 8 a.m. to 7 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: Atul Sahai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge

Drive, Room 2188, MSC 7818, Bethesda, MD 20892. 301–435–1198. *sahaia@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biodata Management and Analysis Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 4:30 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: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892. 301–435–1042. *capraramg@mail.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Instrumentation and Systems Development Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7849, Bethesda, MD 20892. 301–435–0483. *jacobsonrh@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function B Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 12 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: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892. (301) 435–1153. *revzina@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 2 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: Bahiru Gametchu, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892. 301–408–9329. *gametchb@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Cellular Signaling and Regulatory Systems Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.
Contact Person: Elena Smirnova, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892. 301–357–9112. *smirnove@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Membrane Biology and Protein Processing Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Janet M Larkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892. 301–806–2765. *larkinja@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.
Date: October 7, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892. 301–435–1033. *hoshawb@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neuroendocrinology, Neuroimmunology, and Behavior Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 3 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: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892. 301–435–1119. *mselmanoff@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Chemo/Dietary Prevention Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont San Francisco, 950 Mason Street, San Francisco, CA 94108.
Contact Person: Sally A Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892. (301) 408–9724. *mulherns@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Social Sciences and Population Studies Study Section.
Date: October 7, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.
Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. (301) 435–0694. *wellerr@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.
Date: October 7, 2010.
Time: 8 a.m. to 6:30 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: Diane L Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892. 301–435–2514. *stassid@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics C Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Barbara Whitmarsh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892. 301/435–4511. *whitmarshb@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Nanotechnology Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 4 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: James J Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892. 301–806–8065. *lijames@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Cellular Mechanisms in Aging and Development Study Section.
Date: October 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: John Burch, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of

Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892. 301–408–9519. *burchjb@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Clinical and Integrative Diabetes and Obesity Study Section.

Date: October 7, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892. 301–408–9901. *sheardn@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 7, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Bellevue Hotel, 100 112th Avenue, NE., Bellevue, WA 98004.

Contact Person: Gary Hunnicutt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. 301–435–0229. *gary.hunnicutt@nih.gov*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.

Date: October 7, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. (301) 435–1242. *driscolb@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Cell Death in Neurodegeneration Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Kevin Walton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892. 301–435–1785. *kevin.walton@nih.hhs.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: October 7–8, 2010

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892. 301–435–1259. *nadis@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis, Washington, DC, 923 16th Street, NW., Washington, DC 20006.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892. (301) 594–1245. *ivinsj@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—2 Study Section.

Date: October 7–8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Maqsood A. Wani, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892. 301–435–2270. *wanimaqs@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Intercellular Interactions Study Section.

Date: October 7, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892. (301)-435–1023. *byrnesn@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: October 7–8, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Valerie Durrant, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892. (301) 408–9882. *durrantv@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Vaccines Against Microbial Diseases Study Section.

Date: October 7–8, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City at Washington, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Jian Wang, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892. (301) 435–2778. *wangjia@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroimmunology and Brain Tumors Study Section.

Date: October 7–8, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892. (301) 408–9135. *joshij@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Virology—B Study Section.

Date: October 7–8, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.

Contact Person: Robert Freund, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892. 301–435–1050. *freundr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 25, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–21666 Filed 8–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Advisory Neurological Disorders and Stroke 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 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 Neurological Disorders and Stroke Council Training, Career Development, and Special Programs Subcommittee.

Date: September 22, 2010.

Open: 6 p.m. to 7 p.m.

Agenda: To discuss the training plan of the institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 7 p.m. to 7:30 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: Stephen J. Korn, PhD, Director, Training and Special Programs Officer, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154, MSC 9527, Bethesda, MD 20892–9527, (301) 496–4188.

Name of Committee: National Advisory Neurological Disorders and Stroke Council; Basic and Preclinical Programs Subcommittee.

Date: September 23, 2010.

Time: 8 a.m. to 9:30 a.m.

Agenda: To discuss basic and preclinical programs policy.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: William D. Matthew, PhD, Director, Office of Translational Research, NINDS, National Institutes of Health, Neuroscience Center, Room 2137, 6001 Executive Blvd., (301) 496–1779, *Bill.Matthew@nih.gov.*

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.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 25, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–21665 Filed 8–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 USC, 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 on Alcohol Abuse and Alcoholism, Special Emphasis Panel, Review of Resource Grant Applications (R24).

Date: November 3, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Richard Rippe, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2109, 301–443–8599. *rippera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: August 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–21663 Filed 8–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Disorders Involving Children and Their Families.

Date: October 4–5, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services in Non-Specialty Settings.

Date: October 12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Adult Disorders.

Date: October 12–13, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services in MH Specialty Settings.

Date: October 15, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 25, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–21662 Filed 8–30–10; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships for Biodefense (Vaccines/Immunotherapeutics 3).

Date: September 27, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health. 6700B Rockledge Drive, Room 3254, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Lewis Ernst, PhD, Scientific Review Official, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships for Biodefense (Vaccines/Immunotherapeutics 1).

Date: October 8, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 3254, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Lewis Ernst, PhD, Scientific Review Official, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships for Biodefense (Vaccines/Immunotherapeutics 2).

Date: October 12, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 3254, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Lewis Ernst, PhD, Scientific Review Official, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@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: August 25, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–21647 Filed 8–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of a Co-Exclusive License: Natural Plant Extracts From Incense Cedar as Pest Control Agents and Methods for Their Use

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Technology Transfer Office of the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), is contemplating the grant of worldwide co-exclusive licenses to practice the inventions embodied in the patents referred to below to Allylix, Incorporated and Valent BioSciences Corporation, having places of business in San Diego, CA and Libertyville, IL, respectively. The patent rights in these inventions have been assigned to the government of the United States of America. The patent(s) to be licensed are:

U.S. Pat. No. 7,629,387, "Compounds for Pest Control and Methods for Their Use," issued December 8, 2009; and U.S. Pat. No. 7,129,271, "Compounds for Pest Control and Methods for Their Use," issued October 31, 2006; and all related foreign patent applications. Inventors: Marc C. Dolan, Nicholas A. Panella, Joseph J. Karchesy, Gary O. Maupin. [CDC Tech. ID No. I–024–00]; and U.S. Pat. No. 7,230,033, "Pest Control Compositions and Methods for Their Use," issued June 12, 2007. *Inventors:* Marc C. Dolan, Nicholas A. Panella, Gabrielle E. B. Dietrich, Joseph J. Karchesy, Gary O. Maupin [CDC Tech. ID No. I–028–04].

Additional rights to be licensed are: "Natural Plant Extracts from Incense Cedar as Pest Control Agents and Methods for Their Use," submitted February 21, 2008. Inventors: Marc C. Dolan, Nicholas A. Panella, and Joseph J. Karchesy [CDC Tech. ID No. I–019–08].

Patent Status: Various.

Earliest Priority Date: December 8, 2000.

The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Technology

This technology identifies biologically active fractions of essential oil of Alaska yellow cedar which are insecticidal and acaricidal. These natural compounds were found to be active for up to 11

weeks against the tick vector, Ixodes scapularis; the mosquito vector, Aedes aegypti; and the flea vector, Xenopsylla cheopsis.

ADDRESSES: Requests for copies of these patent applications, patents, and technology disclosures, inquiries, comments, and other materials relating to the contemplated license should be directed to Andrew Watkins, J.D., Ph.D., Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, *telephone:* (770) 488–8600; *facsimile:* (770) 488–8615.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 25, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–21643 Filed 8–30–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; National Security Entry-Exit Registration System (NSEERS), OMB No. 1653–0036.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 5, 2010 Vol. 75 No. 86, 24721, allowing for a 60 day public comment period. ICE received nine (9) comments during this comment period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days September 30, 2010.

Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* National Security Entry-Exit Registration System (NSEERS).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* There is no form associated with this collection which is sponsored by U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. This information collection requires certain nonimmigrant aliens to make specific reports to ICE approximately 30 days after arrival; every 12 months after arrival; upon certain events, such as change of address, employment or school; and at the time they leave the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 58,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 29,000 annual burden hours.

Requests for additional information about information should be sent via e-mail to *forms.ice@dhs.gov* with "NSEERS" in the subject line.

Dated: August 24, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–21627 Filed 8–30–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of New Information Collection for Review; ICE Mutual Agreement between Government and Employers (IMAGE), OMB No. 1653–NEW.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 11, 2010 Vol. 75 No. 112 33319, allowing for a 60 day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days September 30, 2010. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* IMAGE Information Request and Membership Application/ICE Mutual Agreement between Government and Employers (IMAGE)

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 73–028. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Businesses or other for-profit and not-for-profit institutions. The Immigration and Customs Enforcement Mutual Agreement between Government and Employers (IMAGE) program is the outreach and education component of the Office of Investigations (OI) Worksite Enforcement (WSE) program. IMAGE is designed to build cooperative relationships with the private sector to enhance compliance with immigration laws and reduce the number of unauthorized aliens within the American workforce. Under this program ICE will partner with businesses representing a cross-section of industries. A business will initially complete and prepare an IMAGE membership application so that ICE can properly evaluate the company for inclusion in the IMAGE program. The information provided by the company plays a vital role in determining it suitability for the program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 90 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be sent via e-mail to *forms.ice@dhs.gov* with "IMAGE Program Application" in the subject line.

Dated: August 24, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–21628 Filed 8–30–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0749]

Certificate of Alternative Compliance for the Offshore Supply Vessel LYMAN MARTIN

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel LYMAN MARTIN as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternate Compliance was issued on June 29, 2010.

ADDRESSES: The docket for this notice is 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0749 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LTJG Christine Dimitroff, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2176. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed for under Title 33, Code of Federal Regulation, parts 81 and 89, has been issued for the offshore supply vessel LYMAN MARTIN, O.N. 11227085. The horizontal distance between the forward and aft masthead lights may be 21′ − 10″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: *August 6, 2010.*

R.S. Keister,

Commander, U.S. Coast Guard, Chief, Vessel & Facilities Inspections, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010–21614 Filed 8–30–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–14]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the York Housing Authority for the purchase and installation of Variable Refrigerant Variable Refrigerant Volume systems, also known as Variable Refrigerant Flow

(VRV/VRF) systems at the Broad Park Manor project.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on August 16, 2010, upon request of the York Housing Authority, HUD granted an exception to the applicability of the Buy American requirements with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods, VRV/VRF systems, are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: August 19, 2010.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–21732 Filed 8–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–07]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2010 HOPE VI Revitalization Grants Program

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its website of the applicant information, submission deadlines, funding criteria and other requirements for the FY2010 HOPE VI Revitalization Program NOFA. Approximately $124 million is made available through this NOFA, by the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009). In accordance with Section 24(a) of the United States Housing Act of 1937, the purpose of HOPE VI Revitalization grants is to: (1) Assist PHAs to improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof); (2) revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood; (3) provide housing that will avoid or decrease the concentration of very low-income families; and (4) build sustainable communities.

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the HOPE VI Revitalization Program is 14.866. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Questions regarding the 2010 General Section should be directed to the Office of Departmental Grants Management and Oversight at 202–708–0667 (this is not a toll-free number) or the NOFA Information Center at 1–800–HUD–8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Dated: August 25, 2010.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2010–21733 Filed 8–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–25]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2010 Choice Neighborhoods Initiative—Round 1 NOFA

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the applicant information, submission deadlines, funding criteria and other requirements for the FY2010 Choice Neighborhoods—Round 1 NOFA. Approximately $65 million is made available through this NOFA, by the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009). The FY 2010 Choice Neighborhoods competition will be conducted through two rounds. Today's publication announces the posting of the Round 1 NOFA. In Round 1, applicants may submit either a Choice Neighborhood Planning Grant or a Choice Neighborhood Implementation Grant application. Upon conclusion of its review of Planning Grant applications submitted in response to the Round 1 NOFA, HUD will announce approximately 12–15 Planning Grant awards. Upon conclusion of its review of Implementation Grant applications submitted in response to the Round 1 NOFA, HUD will select approximately 10 Implementation Grant finalists. HUD will then publish a second NOFA (*i.e.,* the Round 2 NOFA) and provide these

Implementation Grant finalists an opportunity to assemble and submit a more detailed application.

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the Choice Neighborhood Initiative Program is 14.889. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in the program NOFA. Questions regarding the 2010 General Section should be directed to the Office of Departmental Grants Management and Oversight at 202–708–0667 (this is not a toll-free number) or the NOFA Information Center at 1–800–HUD–8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Dated: August 26, 2010.

Barbara S. Dorf,

Director, Office of Departmental Grants, Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2010–21734 Filed 8–30–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Scientific Integrity Policy of the Department of the Interior

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and request for comments.

SUMMARY: We, the Department of the Interior, are proposing and seeking comment on a Department-wide policy to ensure the integrity of scientific activities in the Department.

DATES: Submit comments by September 20, 2010.

ADDRESSES: Send comments to: *DOI_Science_Integrity@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Alan D. Thornhill, 1849 C Street, NW., MS 5428, Washington, DC 20240–0002, 202–208–6249.

SUPPLEMENTARY INFORMATION: In his March 9, 2009, memorandum on Scientific Integrity, the President states that, "Each agency should adopt * * * procedures * * * to ensure the integrity of scientific and technological information and processes on which the agency relies in its decision making or otherwise uses or prepares." Interior has developed draft policies and standards for ensuring accuracy and integrity in all scientific activities conducted in the Department. After public comment, revision, and approval, we plan to incorporate these procedures into the Department Manual.

You may submit comments on any part of these proposed procedures by e-mail, letter, or in person at the address in the **ADDRESSES** section of this notice. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Department of the Interior proposes the following procedures for ensuring scientific integrity as a new chapter in the Department Manual:

3.1 Purpose

A. This chapter establishes:

(1) A Departmental policy on integrity of scientific activities and a code of scientific conduct;

(2) Ethical standards for Department of the Interior (DOI) employees who conduct or supervise scientific activities for the Department, or who compile and translate scientific information into formats used by the Departmental management; and

(3) A process for initial handling of violations of the scientific conduct code.

B. Administrative rules and laws pertaining to activities such as falsification of government formats, sexual harassment, civil rights, acceptance of gifts, nepotism, disclosure of financial interest, conflict of interest or outside employment are neither altered nor superseded by the existence of this chapter.

3.2 Scope

This chapter applies to:

A. All employees and contractors who engage in scientific activities; and

B. All volunteers who assist with scientific activities. (Volunteers are required to provide unbiased and objective information to their supervisors. All information collected by a volunteer is considered provisional until verified by the supervisor or other designee.)

3.3 Policy on Integrity of Scientific Activities

The Department:

A. Is dedicated to preserving the integrity of scientific activities conducted on its behalf and will not tolerate misconduct in the performance of scientific activities;

B. Will take appropriate action to protect the public from the effects of inaccurate information produced through scientific activities;

C. Will investigate, to the maximum extent of the law, each allegation of misconduct while ensuring the rights and privacy of any party against whom the allegation is made.

D. Will take appropriate disciplinary action, which may include termination of employment, in accordance with DOI personnel policies for non-compliance with the Code of Scientific Conduct in section 3.4.

3.4 Code of Scientific Conduct

Each person covered by section 3.2 must adhere to the following code of scientific conduct:

To the best of my ability I will do all of the following:

- I will act in the interest of the advancement of science and contribute the best, highest quality scientific information for the Department of the Interior.
- I will conduct, process data from, and communicate the results of scientific activities honestly, objectively, thoroughly, and expeditiously.
- I will be responsible for the resources entrusted to me, including equipment, funds, my time, and my employees' time. I will promptly and accurately collect, use, and report all financial resources under my control; and promptly, thoroughly, and accurately report all scientific work.
- I will fully disclose all research methods used, available data, and final reports and publications consistent with applicable laws and policy.
- I will respect, to the fullest extent permitted by law, confidential and proprietary information provided by communities, Indian Tribes, and individuals whose interests and resources are studied or affected by scientific activities or the resulting information.
- I will neither hinder the scientific activities of others nor engage in dishonesty, fraud, deceit, misrepresentation, coercive manipulation, or other scientific or research misconduct.
- I will welcome constructive criticism of my scientific activities, will welcome and participate in appropriate peer reviews, and will critique others' work respectfully and objectively. I will substantiate comments that I make with the same care with which I report my own work.
- I will be diligent in creating, using, preserving, documenting, and maintaining collections and data. I will adhere to established quality assurance and quality control programs. I will follow the Department's records retention policies and comply with Federal law and agreements related to use, security, and release of confidential and proprietary data.
- I will adhere to appropriate standards for reporting the results of scientific activities and will respect the intellectual property rights of others.
- I will, to the extent possible and practical, differentiate among facts, opinions,

hypotheses, and professional judgment in reporting the results of scientific activities to others, including scientists, decision makers, and the public.

• I will be responsible for the quality of any data I collect or any interpretations I make, and for the integrity of conclusions I draw in the course of my scientific activities.

• I will place quality and objectivity of scientific activities and reporting of their results ahead of personal gain or allegiance to individuals or organizations.

3.5 Employee Responsibilities

A. All employees must comply with:

(1) The Federal Policy for the Protection of Human Subjects, published at 56 FR 28012–28018 (June 18, 1991);

(2) The Standards of Ethical Conduct for Employees of the Executive Branch in 5 CFR 2635; and

(3) All Federal statutes, Executive Orders, Presidential Memoranda, Office of Government Ethics and Office of Personnel Management regulations, and Departmental regulations and policies (as required by 43 CFR 20.501 and 20.502).

B. All employees must immediately report through official channels or directly to the Office of Inspector General (OIG):

(1) Any known, suspected, or alleged fraud, waste, abuse, or mismanagement affecting the Department; and

(2) Any serious integrity matter that affects the integrity of the Department.

C. Employees who engage in scientific activities must comply with the Code contained in section 3.4.

D. Employees who are involved in the conduct and reporting of scientific activities must comply with the Federal Policy on Research Misconduct, published at 65 FR 76260–76264 (December 6, 2000).

3.6 Bureau and Office Responsibilities

Each bureau and office must:

A. Establish procedures to ensure adherence to the requirements of this chapter; and

B. When investigating allegations of misconduct under this chapter, ensure that investigators have adequate scientific expertise, provide for due process, and be consistent with the Federal Policy on Research Misconduct.

3.7 Legal Effects of This Chapter

This chapter:

A. Is intended to improve the internal management of the Department of the Interior;

B. Does not create any right or benefit, substantive or procedural, enforceable by law by any person against the United States, its agencies, its officers or employees, or any other person; and

C. Does not replace the Standards of Ethical Conduct at 5 CFR 2635 and other relevant ethical obligations of Department of the Interior scientists.

3.8 Allegations of Misconduct

A. Establishing a Finding of Scientific Misconduct

Before taking disciplinary action under this section, a supervisor must establish a finding of scientific misconduct. A finding of scientific misconduct requires that:

(1) There is a notable departure from accepted practices of the scientific community for maintaining the integrity of the scientific or research record;

(2) The misconduct is committed intentionally, knowingly, or in reckless disregard of accepted practices; and

(3) The allegation is established by a preponderance of evidence.

B. Disciplinary Action

(1) Once a supervisor has verified an employee's misconduct under section 3.8A, the supervisor will administer disciplinary action in accordance with DOI personnel policies and using for guidance the Departmental Manual chapter on "Discipline and Adverse Actions" 370 DM 752. Supervisors should:

(i) Select the penalty they believe necessary to correct the misconduct and to discourage repetition; and

(ii) Evaluate each situation to ensure that the actions proposed and taken are reasonable.

(2) When there is a significant unauthorized departure from accepted practices, or repeated violations of a less serious nature, supervisors may propose and decide on appropriate penalties, including termination of employment.

(i) If a supervisor is considering a formal disciplinary action, the supervisor must immediately consult the Human Resources office.

(ii) The Human Resources office may consult with the Office of the Solicitor (SOL) on proposed disciplinary actions and must consult with SOL on all proposed disciplinary actions that are appealable to the Merit Systems Protection Board.

(3) All responses to allegations of misconduct, from inquiry to confirmation to adjudication and appeal, must be consistent with the guidelines and principles in the Federal Policy on Research Misconduct, Departmental policy, and 370 DM 752.

C. Appeal Rights

For disciplinary actions up to and including a 14-day suspension, employees not covered by a collective bargaining agreement have the right to appeal through the Administrative Grievance Procedure. Employees covered by a collective bargaining agreement have the right to appeal through a Negotiated Grievance Procedure (NGP). For suspensions of more than 14 days, up to removal from Federal service, employees have the right to appeal to the Merit Systems Protection Board or through an applicable NGP (5 CFR 752). Neither temporary employees, probationary employees, contractors, nor volunteers have any appeal rights.

3.9 Authorities

A. Statutes and Regulations

(1) 5 U.S.C. 301 allows the head of an executive department to prescribe regulations for the conduct of its employees.

(2) 43 CFR 20.501 requires employees of the Department to comply with all Federal statutes, Executive Orders, Office of Government Ethics and Office of Personnel Management regulations, and Departmental regulations.

(3) 43 CFR 20.502 states that employees are required to carry out the announced policies and programs of the Department.

(4) 43 CFR 20.502(a) states that an employee is subject to appropriate disciplinary action if he or she fails to comply with any lawful regulations, orders, or policies.

B. Federal Policy on Research Misconduct, 65 FR 76260–76264, December 6, 2000

C. Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635

3.10 Definitions

A. Conflict of Interest

Any financial or other interest which conflicts with the actions or judgments of an employee when conducting scientific activities because it:

(1) Could significantly impair the employee's objectivity; or

(2) Could create an unfair competitive advantage for any person or organization.

Department of the Interior scientists are also subject to conflict of interest and appearance of a lack of impartiality requirements at 18 U.S.C. 208 and 5 CFR 2635 Subparts D and E.

B. Decision Makers

Departmental employees who:

(1) Are not engaged in scientific activities;

(2) Communicate, recommend, or decide policy or management;

(3) Communicate, recommend, or decide expenditure of Departmental funds; and

(4) Rely in part on scientific products, or on documents compiled and translated from scientific products, to ensure that agency actions are supported by evidence and have a rational basis, and are not arbitrary or capricious.

During the conduct of Departmental business, decision makers may be involved in editing of documents for clarification of major points to aid decision making. Such editing is beyond the scope of this chapter.

C. Employees Who Engage in Scientific Activities Are

(1) Individuals who conduct or directly supervise scientific activities, including but not limited to proposing, performing, or reviewing research, or in reporting research results; and

(2) Individuals who directly supervise or personally perform work involving the compilation and translation of scientific information into formats used by the Department's decision makers.

D. Fabrication

Making up data or results and recording or reporting them.

E. Falsification

Manipulating research materials, equipment, or processes; or changing or omitting data or results such that the research is not accurately represented in the research record.

F. Plagiarism

The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

G. Reporting

Dissemination or disclosure of the results of scientific activities. Dissemination and disclosure may be oral or in any media, including print and digital media.

H. Research

All basic, applied, and demonstration research in all fields of science, engineering, and mathematics, including social, behavioral and economic research.

I. Research Misconduct

Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. (This definition is quoted from The Federal Policy on Research Misconduct (65 FR 76260–76264).)

J. Science

Knowledge obtained and tested through use of the scientific method. Science may also include the observation and classification of facts with the goal of establishing verifiable knowledge derived through induction and hypothesis.

K. Scientific Activities

Activities involving inventorying, monitoring, experimentation, study, research, modeling, and scientific assessment. Scientific activities are conducted in a manner specified by standard protocols and procedures and include any of the physical, biological, or social sciences as well as engineering and mathematics that employ the scientific method. Inspections for regulatory compliance and resulting records are not included because they are covered by separate requirements.

L. Scientific Assessment

Evaluation of a body of scientific or technical knowledge which typically synthesizes multiple factual inputs, data, models, assumptions, and/or implies best professional judgment to bridge uncertainties in the available information.

M. Scientific Method

A method of research in which a problem is identified, relevant data are gathered, a hypothesis is formulated from these data, and the hypothesis is empirically tested.

N. Scientific Misconduct

Fabrication, falsification, or plagiarism in proposing, performing or reviewing scientific activities and their products.

O. Scientific Product presents the results of scientific activities including the synthesis, compilation, or translation of scientific information into formats used in the Department's decision-making process.

Appendix

Commentary to Explain and Clarify the Intent of the Basic Elements of the Code

A. *Scientific Excellence, Integrity, and Conflict of Interest.* Honesty and integrity of Department employees subject to the Code are vital to the public interest and critical to conducting the Department's mission. Scientific activities provide data to inform many of the Department's decision-makers regarding the stewardship of our Nation's land, energy, mineral, water, air, biological, and cultural resources. Employees subject to the Code must avoid conflicts of interest that occur when personal interest or gain interferes with or could be construed to interfere with the objectivity of their actions or judgments. They are obligated to be thorough in documenting their work to ensure that the details of their methods are described adequately enough to allow other scientists to critically evaluate or reproduce their results. They will use the best available and practicable practices, protocols, methodologies and technologies available to them when conducting scientific activities as well as in the review, use and dissemination of scientific information. This Code does not suggest that it is unethical to use novel investigative approaches, employ unusual methods of analysis, exclude data known to be faulty for identifiable material reasons, or interpret data in a new or unique way. However, novel methods and data modifications should be fully documented in the research record to avoid misinterpretation of any such departure from standard protocols or methodology.

B. *Abuse of Resources.* Department employees subject to the Code will ensure appropriate use of resources in the conduct of scientific activities, including equipment, funding, staff time, information resources, and any privately owned or Federal property through the awareness of the requirements of applicable laws and regulations. Most importantly, employees will use resources wisely, efficiently, respectfully, and prevent abuse of cultural and natural resources during the conduct of scientific activities. Employees must strive to select methods and materials that, to the best of current knowledge, minimize or eliminate adverse impacts to cultural or natural resources or their future examination, scientific investigation, treatment or function. Professional standards for non-invasive or non-destructive testing/sampling will be followed when studying cultural materials. Animals used for research purposes are public resources, and employees will obey public laws concerning treatment of laboratory animals. Public Law (Pub. L. 99–198), The Food Security Act of 1985, and Federal regulation (9 CFR Part 3) primarily apply to treatment of laboratory animals. Scientists should follow public laws (including Pub. L. 99–108, as applicable) and regulations for activities involving animals in the wild and should consider, where appropriate, guidelines regarding treatment of wild animals published by professional wildlife or scientific societies.

C. *Research Involving Human Subjects.*

(1) Department employees subject to the Code conduct scientific activities among groups, including but not limited to hikers, campers, hunters and anglers, present-day ethnic or occupational communities, and Indian Tribes. These consultations must meet compliance requirements for planning, the Native American Graves Protection and Repatriation Act of 1990 (Pub. L. 101–601), historic preservation, and subsistence uses. Such persons involved in scientific activities must be treated with professionalism and respect. To this end, the Department adopted the common rule published as Federal Policy for the Protection of Human Subjects (56 FR 28012–28018, June 18, 1991). Exempted from this rule is human subjects research involving the use of educational tests, survey procedures, interview procedures or observation of public behavior unless the information obtained is recorded in such a manner that human subjects can be identified, and/or disclosure could place subjects at risk of criminal or civil liability. Many information collections are regulated under the Paperwork Reduction Act of 1995 (5 CFR 1320), and applicable Departmental procedures should be followed (381 DM 11, 12). Exempted from this rule is observation of human public behavior that involves no data collection from subjects.

(2) Before initiating new scientific activities with any group, Department employees subject to the Code should be familiar with the laws, regulations, and policies (including those that are bureau-specific) governing privacy and freedom of information, ethnographic research guidelines, and types of release and consent forms, as provided information might not be protected from release. Department employees will ensure that the research methods are made clear to participants, that permission is obtained to use interview materials, tapes, photographs, maps and any other materials, and that participants know the legal limits of confidentiality.

D. *Hindering scientific and information gathering activities; failing to protect proprietary and confidential information; engaging in dishonesty, fraud, deceit, misrepresentation; or engaging in or knowingly permitting other scientific, research, or professional misconduct.*

(1) Inappropriately hindering scientific activities by Departmental employees subject to the Code is not tolerated by the Department. This includes actions such as biased review of scientific proposals or manuscripts; physical disruption of another scientist's experiments, field surveys, or database; denial of reasonable access to resources or data needed by other scientists to perform their work; or failure to provide information that other Departmental employees need to duplicate scientific activities or verify their accuracy. Scientific staff will allow management and others appropriate access to resources entrusted to them, unless doing so would violate legal, regulatory or policy restrictions, compromise the scientific validity of their activities or substantially interfere with their performance. Employees are expected to understand existing rules and guidelines regarding the need to make data gathered with Federal dollars accessible. Reasonable judgments to delay public access depend upon individual circumstances when premature release would compromise validity or decision-making ability. Specifically, this applies to work in progress where data have not gone through a planned

quality control/quality assurance protocol that is part of the research design. Therefore, this Code does not attempt to provide universal guidelines for making such case-by-case determinations.

(2) Requirements related to use, security and release of proprietary data are sometimes covered by law, regulation or policy and may be established through an agreement with the originator of the data. These agreements are usually established on a case by case basis. Employees will adhere to these agreements to the extent permitted by law, or policy. The Code prohibits denying other scientists reasonable access to published scientific information for the purpose of enhancing one's interests.

(3) Falsification and fabrication of data and results by Departmental employees are not tolerated by the Department and would be a violation of the Code by employees subject to it.

E. *Participating in Review Processes and Offering Fair and Objective Opinions.*

(1) Peer review is an important element in the creation and use of scientific information. In all cases, external (to the Department) scientific review of scientific activities, information, inventory or monitoring data to be published or used in decision-making is beneficial and, in some cases, it is essential. All employees subject to the Code must know, understand and adhere to Departmental and bureau specific guidelines related to peer review of scientific activities. Open and honest debate is essential for the advancement of science, and peer review is an important part of that debate. The peer-review process should be free of personal and professional jealousies, competitions, non-scientific disagreements, and conflicts of interest.

(2) Reviewers should focus on the logical and scientific validity of the research findings, rather than personal feelings, or interactions (past or current) between the reviewer and the author/investigator. Authors/investigators should address reviewers' comments in a thorough manner, and should document appropriately how they responded to those comments. It is the responsibility of prospective reviewers to disqualify themselves, if the review cannot be done in an objective manner (5 CFR 2635.502). Reviewers should not instigate changes to any scientific study by its authors through intimidation, either implied or stated. Reviewers should document in writing all changes made to the manuscripts or proposals to conduct scientific studies in writing.

F. *Integrity in the Collection and Preservation of Data.*

(1) Quality control and assurance, including protocols, standards, and methodologies, should be routinely established for activities pertaining to the conduct of scientific inquiry and the collection of data. Persons engaged in scientific activities and their managers must know and follow established programs, protocols, standards, and methodologies for the activities they conduct to inform Departmental decisions. Preservation of collections and records created during the conduct of scientific activities is controlled by Federal law (44 U.S.C. chaps. 21, 29, 31, and 33) and Departmental regulations and policies (36 CFR 1228.1–1228.282; 381 DM 11, 12; 384 DM 2, 3, and 4) and bureau regulations and policies. This is important for substantiating scientific activities and supporting subsequent decisions that are influenced by the results. Employees subject to this Code must follow these laws, regulations and policies. Collections made for retention include, but are not limited to, cultural objects in archeological collections and non-cultural biological, geological, and paleontological samples.

(2) Documents that should be retained for the scientific record vary according to the nature of the study and include: study plans; methodology; primary data, such as laboratory notebooks, original data, metadata, and quality assurance/quality control information; and formal data sets, analyses and products. These items may be in any medium, including printed and electronic media. Failure to retain data in accordance with law, regulations and policy is not tolerated by the Department.

G. *Responsible Authorship and Dissemination of Information.*

(1) Authorship of a scientific product must be based on a major intellectual contribution (as part of conception, design, data collection, data analysis, or interpretation) and a significant contribution to its preparation (writing, reviewing, or editing). Authorship includes the responsibility for ensuring that the work reported meets scientific criteria and ethical standards. Conferring authorship to individuals engaged in scientific activities without their knowledge or consent is strictly prohibited by the Code.

(2) Scientific knowledge is cumulative and is built on the contributions of numerous scientists over many years. Recognition of other contributors often takes the form of credits in a publication through an acknowledgment or citation. However, only authors whose substantive comments have been received and incorporated prior to submission should be listed in acknowledgments. Authors will cite or acknowledge any scientific work or the source of any idea that is not regarded as common knowledge among specialists in the particular field and that substantially contributes to a scientific activity and its interpretation and result. The Code prohibits plagiarism or theft of ideas, data or unpublished findings. Departmental employees subject to this Code will acknowledge and, to the extent permitted by law, protect the intellectual efforts of others and the confidentiality of information provided by human subjects. However, when Departmental employees are preparing documents required by the National Environmental Policy Act (NEPA) and the considerations in this paragraph are in conflict with the regulations and guidance of the Council on Environmental Quality regarding the publication of information under NEPA, the regulations and guidance of the Council shall govern.

(3) Duplicative publication is not tolerated by the Department. This does not suggest that it is inappropriate to publish more than one manuscript based on a single scientific activity. In some cases, the same scientific activity may be of interest to separate audiences having different technical specialties or to journals having different readerships. Prior publication of portions of an original idea should always be referenced in later publications. Publishing parts of another paper, or publishing another paper with only minor changes, should only be done to reach different or larger audiences and with the knowledge and consent of the publisher. Employees subject to the Code will accept professional responsibility associated with authorship and know that the interpretation and results of their work are used to inform important decisions in the public interest. Repetitive publication of findings in popular literature does not constitute duplicative publication.

(4) In order to ensure that the Department's decision making is based on the best available science, the Code requires a scientific product to be subject to the required level of review. Public release of a scientific product without the required level of review or without the inclusion of appropriate disclaimers could be considered misconduct.

(5) Additionally, in support of the Department's interest in protecting its decision making, the Code prohibits changing conclusions, deletion of data, or knowingly omitting data from reports and testimony for purposes of misrepresentation or manipulation. At the same time, the Code prohibits suppressing data collection, scientific studies, or publication of results by scientists or their supervisors for the purpose of manipulating Departmental decisions. These actions are not tolerated by the Department. They are violations of the Federal Policy on Research Misconduct because they wrongly characterize results and manipulate results so that research is not accurately represented. Scientific conclusions may only be changed in light of new data or new analyses. Scientists should not succumb to coercion to change data. If an employee subject to the Code believes that he or she has been subjected to coercion, it should be reported immediately to the respective supervisor, bureau, or Departmental ethics program.

Laura Davis,

Associate Deputy Secretary of the Interior.

[FR Doc. 2010–21591 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N188; 96300-1671-0000-P5]

Proposed Information Collection; OMB Control Number 1018-0093; Federal Fish and Wildlife License/Permit Applications, Management Authority

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on November 30, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by November 1, 2010.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

This IC covers permit applications that our Division of Management Authority uses to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws and international treaties, including:

(1) Endangered Species Act (16 U.S.C. 1531 et seq.).

(2) Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

(3) Lacey Act (16 U.S.C. 3371 et seq.).

(4) Bald and Golden Eagle Protection Act (16 U.S.C. 668).

(5) Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 U.S.T. 1087).

(6) Marine Mammal Protection Act (16 U.S.C. 1361-1407).

(7) Wild Bird Conservation Act (16 U.S.C. 4901-4916).

Service regulations implementing these statutes and treaties are in Chapter I, Subchapter B of Title 50, Code of Federal Regulations (CFR). These regulations stipulate general and specific requirements that when met allow us to issue permits to authorize activities that are otherwise prohibited.

This revised IC includes FWS Forms 3-200-74 (Single-Use Export Permits Under a Master File or Annual Program File) and 3-200-75 (Registration of a Production Facility for Export of Certain Native Species). These forms are currently approved under OMB Control Number 1018-0137. After OMB takes action on this information collection request, we will discontinue 1018-0137.

In addition, we are proposing 10 new forms. We believe these forms will reduce burden on applicants, improve customer service, and allow us to process applications and issue CITES documents quickly.

(1) FWS Form 3-200-21a (Report on the Import of Sport-Hunted Trophies of Argali). Applicants currently submit this report in a nonform format.

(2) FWS Form 3-200-80 (Export of Fertilized Live Eggs, Caviar, or Meat from Aquacultured Paddlefish or Sturgeon CITES). Applicants currently use FWS Forms 3-200-24 or 3-200-76 for this activity.

(3) FWS Form 3-200-83 (Approval of a CITES Export Program (American ginseng, CITES furbearers, American Alligator)). Applicants currently submit this information in a nonform format.

(4) FWS Form 3-200-83a (Report for Furbearer CITES Export Programs). Applicants currently submit this report in a nonform format.

(5) FWS Form 3-200-83b (Report for American Alligator CITES Export Programs). Applicants currently submit this report in a nonform format.

(6) FWS Form 3-200-84 (Participation in the Plant Rescue Center Program). Applicants currently submit the necessary information in a nonform format.

(7) FWS Form 3-200-84a (Plant Rescue Program - Report on Receipt and Condition of Specimens). Applicants currently submit this report in a nonform format.

(8) FWS Form 3-200-85 (Establishment of a Master File for the Export of Live Captive-Bred Animals (CITES)). Applicants currently use FWS Form 3-200-24 for this activity.

(9) FWS Form 3-200-86 (Photography of Marine Mammals for Educational or Commercial Purposes (MMPA)). Applicants currently use FWS Form 3-200-43 for this activity.

(10) FWS Form 3-200-87 (Transfer of Live Captive-held Marine Mammals (MMPA)). Applicants currently submit letters for notification or authorization.

II. Data

OMB Control Number: 1018-0093.

Title: Federal Fish and Wildlife License/Permit Applications, Management Authority, 50 CFR 13, 15, 17, 18, 21, and 23.

Service Form Number(s): 3-200-19 through 3-200-37, 3-200-39 through 3-200-44, 3-200-46 through 3-200-53, 3-200-58, 3-200-61, 3-200-64 through 3-200-66, 3-200-69 to 3-200-70, 3-200-73 through 3-200-76, 3-200-80, 3-200-83 through 3-200-87.

Type of Request: Revision of currently approved collection.

Affected Public: Individuals; biomedical companies; circuses; zoological parks; botanical gardens; nurseries; museums; universities; antique dealers; exotic pet industry; hunters; taxidermists; commercial importers/exporters of wildlife and plants; freight forwarders/brokers; and State, tribal, local, and Federal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Nonhour Cost Burden: $942,000, primarily associated with application fees.

The following table lists the various applications and reports with burden estimates. We have rounded the annual burden hours for each form to the nearest hour. Those applications with an asterisk (*) have a reporting requirement for the associated permit. Each permit specifies the required report information.

Application Forms/Reports	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
3-200-19/Import of Sport-hunted Trophies of Southern African Leopard, African Elephant, and Namibian Southern White Rhinoceros.	1,031	1,083	20 minutes	361
3-200-20/Import of Sport-Hunted Trophies (Appendix I of CITES and/or ESA).	15	21	1 hour	21
3-200-21/Import of Sport-Hunted Trophies of Argali	134	201	45 minutes	151
3-200-21a/Report on the Import of Sport-Hunted Trophies of Argali.	100	135	15 minutes	34

Application Forms/Reports	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
3-200-22/Import of Sport-Hunted Bontebok Trophies*	70	95	20 minutes	32
3-200-23/Export of Pre-Convention, Pre-Act, or Antique Specimens (CITES and/or ESA).	127	241	45 minutes	181
3-200-24/Export of Live Captive-Born Animals (CITES)	170	485	45 minutes	364
3-200-25/Export of Raptors	46	64	1 hour	64
3-200-26/Export of skins/products of 7 native species: bobcat, lynx, river otter, American alligator, Alaskan brown bear, black bear, and gray wolf.	618	865	20 minutes	288
3-200-27/Export of Wildlife Removed from the Wild (CITES)	68	113	45 minutes	85
3-200-28/Export/Reexport of Trophies by Hunters or Taxidermists (CITES).	57	95	30 minutes	48
3-200-29/Import/Export/Reexport of Wildlife Samples and/or Biomedical Samples (CITES)*.	108	270	1 hour, 10 minutes.	316
3-200-30/Export/Reexport/Reimport of Circuses and Traveling Animal Exhibitions*.	73	81	1 hour	81
3-200-30a/Export/Reexport of Circuses and Traveling Animal Exhibitions Report.	64	69	30 minutes	35
3-200-31/Introduction from the Sea (CITES)	3	3	2 hours	6
3-200-32/Export/Reexport of Plants (CITES)	105	614	1 hour	614
3-200-33/Export of Artificially Propagated Plants (Multiple Commercial Shipments).	20	303	2 hours	606
3-200-34/Export of American Ginseng (Commercial only)*	41	107	20 minutes	36
3-200-35/Import of Appendix-I Plants (CITES)	3	3	1 hour	3
3-200-36/Export/Import/InterState and Foreign Commerce of Plants*.	3	3	1 hour	3
3-200-37/ Export/Import/Interstate and Foreign Commerce/ Take of Animals*.	110	165	2 hours	330
3-200-39/Certificate of Scientific Exchange (COSE)*	3	7	1 hour	7
3-200-39a/ Certificate of Scientific Exchange (COSE) - Special Reporting Conditions Report.	4	7	30 minutes	4
3-200-40/Export and Reimport of Museum Specimens*	2	2	1 hour	2
3-200-40a/ESA Museum Permit Report	2	2	1 hour	2
3-200-41/Captive-Bred Wildlife Registration*	87	87	2 hours	174
3-200-41a/Captive-Bred Wildlife Registration Annual Report	83	83	30 minutes	42
3-200-42/Import/Acquisition/Transport of Injurious Wildlife	21	21	1 hour	21
3-200-43/ Take/Import/Transport/Export of Marine Mammals or Amendment of Existing Permit*.	16	19	2 hours, 20 minutes.	44
3-200-44/Registration of An Agent/Tannery*	1	1	1 hour	1
3-200-44a/Registered Agent/Tannery Inventory Report	1	1	1 hour	1
3-200-46/Import/Export/Reexport of Personal Pets (WBCA and or CITES).	335	369	30 minutes	185
3-200-47/Import of Birds for Scientific Research or Zoological Breeding and Display (WBCA).	7	16	2 hours	32
3-200-48/Import of Birds Under an Approved Cooperative Breeding Program (WBCA)*.	3	4	1 hours	4
3-200-49/Approval, Amendment or Renewal of a Cooperative Breeding Program (WBCA).	3	4	3 hours	12
3-200-50/Approval of Sustainable Use Management Plan Under the Wild Bird Conservation Act.	2	2	10 hours	20
3-200-51/Approval of a Foreign Breeding Facility Under the Wild Bird Conservation Act.	2	2	8 hours	16
3-200-52/Reissuance or Renewal of a Permit	145	198	15 minutes	50
3-200-53/Export/Reexport of Live Captive-Held Marine Mammals (CITES).	4	4	2 hours	8
3-200-58/Supplemental Application for a Retrospective Document (CITES).	50	50	1 hour	50
3-200-61/CITES Export Programs*	25	25	43 hours, 30 minutes.	1,088
3-200-64/Certificate of Ownership for Personally Owned Wildlife "Pet passport" (CITES).	115	137	30 minutes	69
3-200-65/Registration of Appendix-I Commercial Breeding Operations (CITES).	2	2	40 hours	80
3-200-66/Replacement Document (CITES)	50	50	30 minutes	26
3-200-69/CITES Import/Export- Eagle Transport for Scientific or Exhibition Purposes.	3	3	30 minutes	3
3-200-70/CITES Import/Export- Eagle Transport for Indian Religious Purposes.	16	16	30 minutes	8
3-200-73/Reexport of Wildlife (CITES)	3,975	5,565	30 minutes	2,784
3-200-74/Single-Use Export Permits Under a Master File or Annual Program File.	350	1,000	6 minutes	100
3-200-75/ Registration of a Production Facility for Export of Certain Native Species.	25	25	30 minutes	13

Application Forms/Reports	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
3-200-76/Export of Caviar or Meat of Paddlefish or Sturgeon Removed from the Wild (CITES)*.	12	120	3 hours	360
3-200-80/Export of Fertilized Live Eggs, Caviar, or Meat from Aquacultured Paddlefish or Sturgeon CITES).	5	15	3 hours	45
3-200-83/Approval of a CITES Export Program (American ginseng, CITES furbearers, American Alligator).	2	2	12 hours	24
3-200-83a/Report for Furbearer CITES Export Programs	52	52	1 hour	52
3-200-83b/Report for American Alligator CITES Export Program.	10	10	1 hour	10
3-200-84/Participation in the Plant Rescue Center Program - Application.	3	3	1 hour	3
3-200-84a/Plant Rescue Program - Report on Receipt and Condition of Specimens.	70	140	30 minutes	70
3-200-85/Master File for the Export of Live Captive-bred Animals (CITES)*.	45	90	1 hour	90
3-200-86/Photography of Marine Mammals for Educational or Commercial Purposes (MMPA).	10	15	1.5 hours	23
3-200-87/Transfer of Live Captive-held Marine Mammals (MMPA).	2	25	1 hour	25
Totals	8,509	13,190		9,207

III. Request for Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 25, 2010

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. 2010–21724 Filed 8–30–10; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–40300, F–40313; LLAK965000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision approving the conveyance of surface and subsurface estates for certain lands to Bering Straits Native Corporation, pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of Mary's Igloo, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 6 S., R. 30 W.,
Secs. 13 and 22.

Containing approximately 294 acres.

Notice of the decision will also be published four times in the Nome Nugget.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 30, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@blm.gov.* Persons who use a telecommunication device (TDD) may contact the BLM by calling the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Jennifer L. Noe,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2010–21703 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14867–B; LLAK964000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision approving the conveyance of the surface estate for certain lands to K'oyitl'ots'ina, Limited, Successor in Interest to Hadohdleekaga, Incorporated, for the Native village of Hughes, Alaska, pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to K'oyitl'ots'ina, Limited. The lands are in the vicinity of Hughes, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 9 N., R. 23 E.,
Sec. 5.

Containing 549.52 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 30, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov*, or by telecommunication device (TDD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. 2010–21707 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–11144; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Chugach Alaska Corporation. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act. The lands are located southwest of Cordova, Alaska, aggregating 23.28 acres. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until September 30, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TDD) may contact the BLM by calling the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 2010–21705 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

San Carlos Irrigation Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of public scoping meeting.

SUMMARY: The Department of the Interior, Bureau of Reclamation, announces its intent to prepare an EIS pursuant to the National Environmental Policy Act of 1969, as amended, on the rehabilitation of San Carlos Irrigation Project (SCIP) water delivery facilities near the communities of Casa Grande, Coolidge, and Florence in Pinal County, Arizona. SCIP canals convey irrigation water from the Gila River and Central Arizona Project (CAP) to agricultural lands in the San Carlos Irrigation and Drainage District (SCIDD) and Gila River Indian Community.

The EIS will evaluate alternatives for rehabilitation of existing facilities and construction of new facilities to meet the objectives of the Gila River Indian Community Water Rights Settlement Agreement, as amended, pursuant to Title II of the Arizona Water Settlements Act of 2004 (Pub. L. 108–451).

DATES: Written comments on the scope of the EIS will be accepted until October 18, 2010.

A scoping meeting will be held to solicit public input on the scope of the environmental document, alternatives, concerns, and issues to be addressed in the EIS. The scoping meeting will be a 4-hour open house. The meeting will be held on Saturday, September 18, 2010, 10 a.m.–2 p.m., Coolidge, Arizona.

ADDRESSES: The public scoping meeting will be held at the Coolidge Police Department, City Council Chambers, 911 South Arizona Boulevard, Coolidge, Arizona.

Send written comments on the scope of the EIS to Mr. John McGlothlen, Bureau of Reclamation, 6150 West Thunderbird Road, Glendale, Arizona 85306; or e-mail at *jmcglothlen@usbr.gov.*

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the Scoping Notice and/or EIS, should write to the address given above. Scoping information will also be available on Reclamation's Phoenix Area Office Web site at *http://www.usbr.gov/lc/phoenix.*

FOR FURTHER INFORMATION CONTACT: Mr. John McGlothlen at 623–773–6256, or e-mail at *jmcglothlen@usbr.gov*.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the proposed action is to conserve water, reduce maintenance requirements and associated costs, and improve service to SCIDD and Gila River Indian Community lands. The SCIP system has more than 95 miles of main canals that are unlined, and water losses from infiltration and evapotranspiration are significant. The long length and large cross section of the canal system relative to the service area, combined with the system's age, make operating and maintaining the facilities challenging. Rehabilitation and modernization of canals will conserve water and reduce maintenance requirements by shortening the length of the conveyance system needed to serve SCIDD and Gila River Indian Community lands. In addition, provisions for increased storage and modernized measurement and control will improve service to customers while providing additional avenues for water conservation.

The proposed action includes the reconstruction and lining of major canals, such as the Florence-Casa Grande, Casa Grande, and North Side canals, and construction of new check structures and cross-drainage features. The existing Florence Canal and Florence-Casa Grande Canal Extension would be converted to drainage and recharge channels to protect rehabilitated canals and associated project lands. These conversions would reduce the size of the main water delivery system and reduce maintenance requirements. A new canal would be constructed to connect the rehabilitated Florence-Casa Grande Canal with the rehabilitated Casa Grande Canal. The project would also include relocating laterals or placing short reaches of laterals in pipeline to accommodate changes in land use within the SCIDD service area.

Alternatives currently under consideration include:

- Construction and repair of wells adjacent to the North Side Canal to allow delivery of a combination of groundwater and Gila River water to the SCIDD service area.
- Construction and repair of wells adjacent to the North Side Canal to allow delivery of only groundwater to the SCIDD service area.
- Implementation of an exchange agreement between SCIDD and the Central Arizona Water Conservation District to allow delivery of CAP water to rehabilitated North Side Canal facilities through proposed interties with the CAP Aqueduct. The exchange agreement would also allow flexibility during rehabilitation of the Florence-Casa Grande Canal and facilitate long-term operational reliability of the SCIP system.
- Construction of mid-system and lower-system reservoirs to store irrigation water. Sites presently under consideration may also afford suitable conditions for hydropower generation.

A portion of the water that is conserved from lining SCIP canals would be made available to the Secretary of the Interior for exchange with water stored in the San Carlos Reservoir to maintain a permanent minimum pool in the reservoir for fish and wildlife. Water that is exchanged for this purpose would be retained in the San Carlos Reservoir and not released to the Gila River.

Indian trust assets associated with the proposed action consist of Gila River water conveyed through SCIP facilities to the Gila River Indian Community and conserved water that is retained in the San Carlos Reservoir to maintain a minimum pool.

Special Assistance for Public Scoping Meeting

If special assistance is required at the scoping meeting, please contact Ms. Jessie Haragara at 623–773–6251, or e-mail at *jharagara@usbr.gov.* Please notify Ms. Haragara at least 2 weeks in advance of the meeting to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal indentifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 25, 2010.

Lorri Gray-Lee,

Regional Director, Lower Colorado Region.

[FR Doc. 2010–21642 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK920000–L19100000–BJ0000–LRCS46810000]

Notice of Filing of Plats of Survey, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of Filing of Plats of Survey, Alaska.

DATES: The Alaska State Office, Bureau of Land Management, Anchorage, Alaska, must receive comments on or before September 30, 2010.

ADDRESS: Bureau of Land Management, Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Stephen B. Hamrick, 907–271–5481, fax 907–271–4549, e-mail *shamrick@blm.gov.*

SUPPLEMENTARY INFORMATION: This survey of an Indian Allotment held in trust status and located approximately 18 miles northerly of Talkeetna, Alaska, was executed at the request of the Bureau of Indian Affairs, Alaska Region. The lands surveyed are: The dependent resurvey and subdivision of the SW1/4 of the SE1/4 of section 32, Township 29 North, Range 5 West, Seward Meridian, Alaska, into Lots 5, 6 and 7.

The plat will be available for viewing in the BLM Public Room located on the first floor of the Federal Building; 222 W. 7th Ave., Anchorage, AK 99513–7599. Copies may be obtained for a minimum recovery fee. The plat will not be officially filed until the day after BLM has accepted or dismissed all protests and they have become final, including decisions on appeals.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. 3; 53.

Stephen B. Hamrick,

Chief Cadastral Surveyor.

[FR Doc. 2010–21640 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–10–L19100000–BJ0000–LRCME9R04643]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine individual and Tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 26 N., R. 46 E.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 7 and 18, a portion of the subdivision of sections 7 and 18, a certain division of accretion line and the subdivision of section 7, the survey of the meanders of the present left bank of the Missouri River and informative traverse, downstream, through sections 7 and 18, the limits of erosion and informative traverse, downstream through sections 7 and 18 and certain division of accretion lines, Township 26 North, Range 46 East, Principal Meridian, Montana, was accepted August 19, 2010.

We will place a copy of the plat, in 1 sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in 1 sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Dated: August 23, 2010.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2010–21639 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting; correction.

SUMMARY: The Bureau of Indian Education (BIE) published a document in the **Federal Register** of August 17, 2010, announcing that the Advisory Board for Exceptional Children (Advisory Board) will hold its next meeting in Washington, DC. The notice included an incorrect call-in number.

DATES: The Advisory Board will meet on Thursday, September 2, 2010, from 8:30 a.m. to 4:30 p.m.; Friday, September 3, 2010, from 8:30 a.m. to 4:30 p.m. and Saturday, September 4, 2010, from 8 a.m. to noon Eastern Time.

ADDRESSES: The Thursday, September 2, 2010, and Friday, September 3, 2010, meetings will be held at 1849 C Street, NW., MS–3609–Main Interior Building, Washington, DC 20240; telephone (202) 208–6123. The Saturday, September 4, meeting will be held at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004; telephone (202) 393–2000.

FOR FURTHER INFORMATION CONTACT: Sue Bement, Designated Federal Official, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., P.O. Box 1088, Suite 332, Albuquerque, NM 87103; telephone number (505) 563–5274.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 17, 2010, FR Doc. 2010–20293, on page 50780, in the second column, replace the call-in information with "Conference Number 1–888–417–0376, Passcode 1509140." During the September 2, 2010, meeting, time has been set aside for public comment via conference call from 1–1:30 p.m. Eastern Time. Please use the conference number listed here.

Dated: August 25, 2010.

Donald Laverdure,

Deputy Assistant Secretary for Indian Affairs.

[FR Doc. 2010–21730 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC069000 L17110000 AL0000]

Notice of Public Meeting of the Carrizo Plain National Monument Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Carrizo Plain National Monument Advisory Council (MAC) will meet as indicated below.

DATES: The meeting will be held on Saturday, October 30, 2010 at the Carrisa Plain Elementary School, located approximately 2 miles northwest of Soda Lake Road on Highway 58. The meeting will begin at 10 a.m. and finish at 2:30 p.m. The meeting will focus on the implementation and priorities of the Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the Carrizo Plain National Monument. There will be a public comment period from 1 p.m. to 2 p.m.

FOR FURTHER INFORMATION CONTACT: The BLM, attention: Johna Hurl, Monument Manager, 3801 Pegasus Drive, Bakersfield, CA 93308. Phone (661) 391–6093 or *e-mail: jhurl@blm.gov.*

SUPPLEMENTARY INFORMATION: The nine-member MAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with the public land management in the Carrizo Plain National Monument in Central California. At this meeting, Monument staff will present a strategy on the implementation and priorities of the RMP/EIS. This meeting is open to the public. Depending on the number of persons wishing to comment, and the time available, the time allotted for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: August 20, 2010.

Timothy Z. Smith,

Field Manager, Bakersfield Field Office.

[FR Doc. 2010–21738 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI01000–10–L12200000.AL0000]

Notice of Proposed Supplementary Rules for the Upper Snake Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing supplementary rules for public lands within the approximate 119 miles of river corridor addressed in the Snake River Activity and Operations Plan 2008 (Snake River Plan). The Snake River Plan is a joint BLM and U.S. Forest Service (USFS) Caribou-Targhee National Forest, Palisades Ranger District planning document, approved July 8, 2008. The Snake River Plan describes an array of management actions designed to conserve natural and cultural resources on lands managed by the BLM and the USFS, while providing for recreational opportunities in the area. These proposed supplementary rules would be enforced on lands managed by the BLM.

DATES: You should submit your comments by September 30, 2010. Comments postmarked or received in person or by electronic mail after this date may not be considered in the development of the final supplementary rules.

ADDRESSES: You may submit comments by the following methods: Mail or hand-deliver: Bureau of Land Management, Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Wendy Reynolds, BLM Upper Snake Field Manager at (208) 524–7500. Contact Ron Dickemore, USFS Palisades Ranger District for further information concerning enforcement on lands managed by the USFS (208) 523–1412.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Supplementary Rules
IV. Procedural Matters

I. Public Comment Procedures

Written comments on the rules should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. The BLM is not obligated to consider or include in the Administrative Record for the final supplementary rule, comments received after the close of the comment period (*see* **DATES**), unless they are postmarked before the deadline, or comments delivered to an address other than that listed above (*see* **ADDRESSES**).

Comments, including names, street-addresses, and other contact information of respondents, will be available for public review at the Upper Snake Field Office address listed in (**ADDRESSES**) during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except on Federal holidays).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment–including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

The Snake River Plan covers approximately 119 miles of river corridor in southeast Idaho, including the South Fork of the Snake River (South Fork) from Palisades Dam to the confluence with the Henry's Fork of the Snake River (Henry's Fork), the Henry's Fork from St. Anthony to its confluence with the South Fork, and the main stem of the Snake River (Main Snake) from the confluence south to Market Lake Canal below Lewisville Knolls. A map is available at the BLM Upper Snake Field Office titled "The Snake River Planning Area."

The original Snake River Activity/Operations Plan was published in 1991, but due to increased use, growing popularity of the rivers, population growth, increased environmental impacts, and changes in State and Federal regulations, an updated plan was needed. The Snake River Plan revision was completed in 2008 when the Record of Decision was signed and replaced the 1991 Snake River Plan. The updated Snake River Plan contains a series of standards and management objectives based on the delineation of the planning area into nine site-specific management classes. The plan identifies the implementation of an array of management actions for each of the classes designed to conserve natural and cultural resources, while providing for recreational opportunities in the area.

The Snake River planning process gathered public scoping information using a variety of methods over a 3-year period. Initially, the BLM created traveling kiosks to provide information about the planning process. The kiosks were placed at key locations in the greater planning area. The kiosks contained comment cards that helped generate an interested public list. The BLM then distributed multiple mailings to over 1,000 people with each mailing and received comments concerning the management directions for the plan. The mailing list included all interested public who supplied their addresses during public scoping events, as well as South Fork season pass holders. The BLM staff hosted multiple public scoping meetings, presented the Snake River Plan to interested groups (e.g., local fishing clubs, county commissioners, water user groups), and received numerous comments.

The BLM consulted the Shoshone-Bannock Tribes over the course of the planning timeframe. Multiple scoping meetings with the Shoshone-Bannock Tribes Fort Hall Business Council, Environmental Management staff, and Fish and Wildlife staff were held. The BLM received tribal comments on the proposed management actions and recreation issues. In addition, the draft plan was reviewed by the Shoshone-Bannock Tribes, and the BLM incorporated comments into the Final Snake River Plan.

These supplementary rules will help the BLM achieve management objectives and implement the Plan's decisions. These supplementary rules will also allow the BLM to increase law enforcement efforts that will help mitigate damage to natural resources, provide for public health, and provide for safe public recreation.

III. Discussion of the Proposed Supplementary Rules

The proposed supplementary rules apply to BLM-managed lands located along 119 miles of river corridor that have been analyzed in the Snake River Plan. These rules will implement management direction outlined in the Record of Decision signed on July 8, 2008. Maps that pertain to the supplementary rules will be available at the BLM office in Idaho Falls. All management decisions are proposed under the authority of 43 CFR 8341.1, 8364.1, 8365.1–4, and 9268.3. This notice, with detailed maps, will be posted at the BLM Upper Snake Field Office.

Changes in recreation use, resource conflicts, Idaho Department of Fish and Game (IDF&G) regulations, listings

under the Endangered Species Act (ESA), and population growth have triggered the need for the BLM to implement the supplementary rules within the planning area defined in the Snake River Plan. The objectives of the Snake River Plan are to protect the natural settings, recreational values, geologic, wildlife and fisheries, and cultural values of public lands, while providing a safe and enjoyable experience to the public. Additionally, the supplementary rules will help maintain and improve environmental conditions (*e.g.,* vegetation and riparian health) of developed and undeveloped recreation sites and facilities by identifying designated camping areas, parking areas and boat ramps; requiring fire pan use, and protecting wildlife species through human entry closures of winter range. These rules will also allow for the safety of BLM employees, volunteers, and the general public by eliminating contact with human waste and identifying target shooting areas. These rules will increase visitor safety, reduce human health and sanitation concerns, protect natural and cultural resources, and eliminate motorized and non-motorized impacts on sensitive riparian habitat.

The Snake River Plan defines allowable uses and restricts certain activities in the planning area. These supplementary rules implement management actions identified in the Snake River Plan while allowing for management flexibility. For example, these rules restrict camping to designated sites, require the use of portable toilets, require the use of fire pans, restrict the collection of firewood, and prohibit human entry to critical wintering habitat and nesting locations, which is essential to providing maximum protection to the area's native riparian vegetation, sensitive wildlife and plant species, and the Outstandingly Remarkable Values identified through the Wild and Scenic River Eligibility Study. In addition, these rules protect visitor health and safety while decreasing the likelihood of life-threatening accidents by prohibiting shooting in developed recreation facilities. Finally, the general travel and off-highway vehicle use portion of these rules will enhance user safety and protect critical resources.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These rules will not have an effect of $100 million or more on the economy. These rules will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. These supplementary rules will not affect legal commercial activity, but merely restrict or prohibit, in a reasonable manner, certain public conduct and uses of a limited area of public lands.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the proposed supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the "Discussion of Proposed Supplementary Rules" section of this preamble helpful in understanding these proposed supplementary rules? How could this description be more helpful in making the proposed supplementary rules easier to understand?

Please send any comments you have on the clarity of the proposed supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM and USFS prepared an Environmental Assessment (EA) (ID–310–2006–EA–3398) for the Snake River Activity/Operations Plan Revision, and found that the management direction implementing the plan decisions will not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM has placed the EA, Finding of No Significant Impact (FONSI), and Decision Record on file in the BLM Administrative Record at the address specified in the "ADDRESSES" section. The EA and FONSI are also located on the following BLM Upper Snake Field Office Web site: *http://www.blm.gov/id/st/en/fo/upper_snake.html.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These rules conserve natural and cultural resources and protect public health and safety, while providing for recreational opportunities in the area. Therefore, the BLM has determined under the RFA that these rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a major rule as defined at 5 U.S.C. 804(2). These rules merely protect public health and safety and conserve natural and cultural resources, while providing for recreational opportunities in the area and do not:

(1) Have an annual effect on the economy of $100 million or more;

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

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. These supplementary rules have no effect on State, local, or

tribal governments and do not impose any requirements on any of these entities. These supplementary rules merely impose reasonable limitations or prohibitions on certain public conduct and uses of a limited area of public lands. These rules will conserve natural and cultural resources, and protect public health and safety, while providing for recreational opportunities in the area. Therefore, the BLM has determined that a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of one's property rights. Therefore, the BLM has determined that these supplementary rules would not cause a "taking" of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

These supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules do not conflict with any Idaho State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Idaho State Office of the BLM has determined that these supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these supplementary rules do not include policies that have tribal implications. Government-to-government consultation was conducted with the Shoshone-Bannock Tribes.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These supplementary rules do not comprise a significant energy action. These rules will not have an adverse effect on energy supply, production, or consumption and have no connection with energy policy.

Paperwork Reduction Act

The supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Shannon Bassista, Outdoor Recreation Planner, Bureau of Land Management.

Supplementary Rules for the Planning Area Identified in the Snake River Activity and Operations Plan

For the reasons stated in the Preamble and under the authority of FLPMA, 43 U.S.C. 1733(a) and 43 CFR 8365.1–6, the Upper Snake Field Office, Bureau of Land Management (BLM) proposes to issue supplementary rules for BLM lands covered by the Snake River Plan, to read as follows:

1. Firearms and Target Shooting

a. The discharge of any weapons (*i.e.,* projectiles, firearms, muzzleloaders), including those used for target shooting, within the boundaries or within 250 yards of developed recreation sites or areas is prohibited. Boundaries are defined by perimeter fences and/or the gravel or asphalted parking areas and site roads. Developed recreation site boundaries are identified by maps and/or legal descriptions available at the BLM Upper Snake Field Office and at the following Web site: (*http://www.blm.gov/id/st/en/fo/upper_snake/recreation_sites_html*). All firearm and target shooting rules will apply to new recreation sites as they are developed.

b. The discharge of weapons of any kind is prohibited year-round on BLM lands at North Menan Butte *(i.e.,* all trails, parking areas, or any BLM lands on the slopes and crater of the butte).

c. Any object containing glass or other material that can shatter and cause a public safety hazard must not be used for target shooting.

d. All shooting materials, including spent brass or shells, their containers, and any items used as targets, must be removed and properly disposed of.

2. Length of Stay

All camping within the planning area is subject to a 5-day camping limit within any period of 19 consecutive days. The 5-day limit may be reached either through 5 separate visits or 5 days of continuous occupation during the 19-day period. After the 5-day limit has been reached, campers must move outside of a 20-mile radius of the previous location and not return to that location for 14 days. Exceeding length of stay limits, as indicated by a BLM sign or map, is prohibited.

3. Camping

a. You must only camp in sites or areas designated as open to camping by a BLM sign or map.

b. Camp Areas Accessed by Vehicle or by Foot Travel: At the Kelly Island Campground and Wolf Flats Recreation Area visitors must camp in designated sites identified by a fire ring and/or picnic table. Camping outside of the boundaries defined by barriers such as post and cable or buck and pole fence is prohibited. As undeveloped camping areas within the Upper Snake Field Office are developed by the BLM through the addition of fire rings, restrooms, picnic tables, etc., visitors must camp in identified designated sites at the developed camping locations.

c. Camp Areas Accessed by Floating/Boating: You must camp in designated sites identified by a sign or map between Palisades Dam and Byington boat access. You must camp in designated sites along the rest of the river corridor as they become designated.

d. You must not leave personal belongings overnight in an unattended campsite.

e. You must keep campsites free of trash, litter and debris during the period of occupancy.

f. You must remove all personal equipment and clean campsites upon departure.

g. You must not camp within a 400-meter radius of active Bald Eagle nests, which are indicated by a BLM sign or map. Areas within a 400-meter radius of active Bald Eagle nests are closed to human entry from February 1 to July 31 each year.

These rules supersede the Notice of Seasonal Restrictions and Limited Land Use, Closure Order, Idaho that the BLM published in the **Federal Register** on June 18, 1992 (57 FR 27264).

4. Permits

You must complete and possess a self-issue permit when using overnight designated campsites that are exclusively accessed by boat. Visitors are required to provide one completed copy for the BLM and maintain an additional copy throughout their overnight camping trip. These rules supersede the Notice of Sanitation and Special Recreation Permit Requirements on the South Fork of the Snake River which the BLM published in the **Federal Register** on April 20, 1995 (60 FR 19762).

5. Human Waste Disposal

a. You must remove solid human waste and toilet paper from the 119-mile river corridor. You must use a human waste carryout system (*e.g.,* sealable portable toilet, or a landfill approved biodegradable double bag system). The landfill approved biodegradable system must be made from puncture resistant materials and contain non-toxic powder and decay catalyst that breaks down solid waste and turns liquid waste to a solid for hygienic and spill-proof transport.

Rule 5(a) does not apply where waste disposal facilities are provided (*e.g.,* Kelly Island Campground and Wolf Flats Recreation Area).

b. Any portable toilet system must be reusable, washable, water-tight, and portable toilet and/or RV-dump compatible. Portable toilets with snap-on lids, such as ammo cans or plastic buckets, are required to have a rubber gasket to prevent leaks and spills. Plastic bag liners are not acceptable with the exception of a landfill approved biodegradable double bag system addressed in Rule 5(a).

These rules supersede the Notice of Sanitation and Special Recreation Permit Requirements on the South Fork of the Snake River which the BLM published in the **Federal Register** on April 20, 1995 (60 FR 19762).

6. Campfires and Wood Collecting

a. You must not cut any trees for commercial or private use. You must not remove branches and other parts of the trees that are still attached to the tree unless a BLM permit is issued.

b. You must only collect dead and downed wood for campfires in reasonable amounts. The collected reasonable amount is determined by the amount an average person could haul or carry without the use of a machine.

c. Girdling (making a band around the trunk of a tree by removing a strip of bark) or damaging trees in the planning area is prohibited. The use of chainsaws is prohibited.

d. Fire Pan and Ash Removal: An approved fire pan is a durable, metal pan at least 12-inches x 12-inches wide, with at least a 1.5-inch lip around its outer edge and sufficient to contain a fire and its remains. Visitors must elevate fire pans off the ground to prevent scorching of the soil. If the fire pan does not have legs to elevate it, rocks must be placed underneath the corners of the fire pan. All ash must be removed and carried out of the river corridor in a sealed container or durable bag.

e. Camp Areas Accessed by Vehicle or by Foot Travel: Unless the BLM installs a fire ring, you must use a fire pan and carry out all ash from undeveloped dispersed camping sites. All fires must be fully contained in a metal fire grate, fire pan, or other metal device to contain ashes. Mechanical stoves and other appliances that are fueled by gas and equipped with a valve that allows the operator to control the flame are allowed.

f. You must not start or maintain a fire in sites or areas not designated as open for such use by a BLM sign or map.

g. Camp Areas Accessed by Floating/Boating: You must use a fire pan and carry out all ash prior to abandoning the site.

h. When starting or maintaining a fire outside of a developed recreation site, you must contain and dispose of fire ashes and debris as indicated by a BLM sign or map.

i. You must not burn wood or other material containing nails, glass, or any metal.

7. General Travel Management

a. You must not enter an area designated closed by a BLM sign or map by means of motorized vehicle, including off-highway vehicles (OHVs). The open roads in the planning area are located within the developed recreation site boundaries that are identified by maps and/or legal descriptions available at the BLM Upper Snake Field Office and at the following Web site: *http://www.blm.gov/id/st/en/fo/upper_snake/recreation_sites.html.* The site roads and trails are also shown on these maps.

b. Roads and trails must only be used when designated as open by the BLM sign or map. You must only access such roads and trails by an allowable method of travel as indicated by a BLM sign or map. Rule 7(b) does not apply to holders of BLM-issued rights-of-way for maintenance or administrative purposes.

c. From December 1 through April 30, the Stinking Springs Trail and parts of the upper bench adjacent to the Wolf Flats Recreation Area are closed to human and vehicle entry without a permit to protect wintering big game. BLM closure maps are available at the BLM Upper Snake Field Office. Outside of the closure period, the motorized portion of trail is open to all modes of travel, except snow vehicles and vehicles more than 50 inches wide. The legal description for the closure is:

Boise Meridian, Idaho

T. 4 N., R. 41 E.,
- Sec. 32, lands east of Kelly Canyon Road in the NE¼, lands east of Kelly Canyon Road in the SE¼NW¼, lands east of Kelly Canyon in the NE¼SW¼, SE¼;
- Sec. 33, a portion of the W½NE¼, a portion of the SW¼SW¼SE¼NE¼, NE¼NEW¼, lands east of the Kelly Canyon Road in the NW¼NW¼, S½NW¼, SW¼, a portion of the NE¼SE¼, W½SE¼, SE¼SE¼.

T. 3 N., R. 41 E.,
- Sec. 2, SW¼;
- Sec. 3, a portion of the NE¼NE¼, W½NE¼, SE¼NE¼, W½, SE¼;
- Sec. 4, N½SW¼, SE¼SW¼, SE¼;
- Sec. 5, NW¼NE¼;
- Sec. 8, a portion of lots 6 and 8;
- Sec. 9, a portion of lots 2 through 4, N½, NE¼SW¼, N½SE¼, SE¼SE¼;
- Sec. 10, a portion of lots 1 and 2, N½NE¼, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, a portion of the SE¼SW¼;
- Sec. 11, a portion of lots 2 through 4, N½NW¼, N½SE¼SE¼;
- Sec. 15, a portion of lots 7 and 8, a portion of the NW¼NW¼;
- Sec. 16, a portion of lots 5 and 6.

These rules supersede the Notice of Emergency Closure of Public Lands, Idaho that the BLM published in the **Federal Register** on March 16, 1988 (53 FR 8701).

8. Vehicle Size and Trail Width

a. You must not operate a motorized or mechanized vehicle in violation of trail width and/or vehicle type restrictions as indicated by a BLM sign or map.

b. You must not operate any vehicle more than 50 inches wide on any designated OHV routes.

c. You must not operate any vehicle more than 36 inches wide on any designated single track routes.

9. Boat Launch

You may launch a boat in designated boat launches that are identified by a BLM sign or map.

10. Parking Restrictions

You must comply with parking restrictions at BLM designated recreation sites or identified by a BLM sign or map.

11. Kelly Island Campground

You must comply with the following regulations at Kelly Island Campground:

a. Only two vehicles are permitted in a single campsite, only one of which

may be a recreational vehicle (RV), camper, or vehicle with a camp trailer. No more than eight people are allowed per site.

b. Double campsites 1, 3, and 6 can accommodate no more than four vehicles, only two of which may be an RV, camper, or vehicle with a camp trailer. No more than 16 people are allowed per double campsite. For all double campsites, the standard campsite fee must be doubled.

c. All camping is subject to a 5-day stay limit.

d. The campsite may only be occupied nightly by registered parties.

e. Horses must be kept outside the recreation site and campground. All pets must be on a leash not longer than 6 feet and secured to a fixed object or under the control of a person, or otherwise physically restricted at all times.

f. You must keep and leave your camp clean. Do not throw trash into the river, fire rings, or vault toilets.

g. Fires must be fully contained in a metal fire grate, fire pan, or other metal device to contain ashes.

h. Do not damage buildings, signs, trees, vegetation or other facilities.

i. Visitors must obey quiet hours from 10 p.m. until 7 a.m. Do not use generators, radios, or other noisy devices during quiet hours.

j. Overnight visitors must return to the campground by 10 p.m. The entrance gate will be locked from 10 p.m. until 7 a.m. to prevent non-campers from entering.

k. You must not enter Kelly Island Campground via an OHV. Do not remove OHVs from trailers at Kelly Island Campground.

12. Other Use Authorizations

You must not violate any terms, conditions or stipulations of any permit or other authorization issued for special use of these public lands.

Exceptions

The prohibition on the use of firearms in rule 1(a) does not prohibit hunting by licensed hunters in legitimate pursuit of wild game during the proper season with appropriate firearms, as permitted by Idaho Department of Fish and Game, within all developed recreation site boundaries after October 1.

Hunting is prohibited within the Kelly Island Campground boundaries until the campground is closed for the season (closure timeframe varies), after which hunting by licensed hunters in legitimate pursuit of wild game is permitted within the boundaries. The gate must be closed and locked for the season before hunting (by foot) is permitted within the Kelly Island Campground boundaries. Campground closure will be advertised at the Eastern Idaho Visitor Center, the BLM Upper Snake Field Office, and at the following BLM recreation Web site: (*http://www.blm.gov/id/st/en/fo/upper_snake/recreation_sites_html*).

Definitions: For the purpose of these supplementary rules, the following definitions apply unless modified within a specific part or regulation:

Camping means erecting a tent or a shelter of natural or synthetic materials, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home, or trailer for the purpose or apparent purpose of overnight occupancy.

Designated campsite means a specific location identified by the BLM for camping. Designated campsites could include individual sites in developed campgrounds and developed recreation sites for camping that may or may not contain picnic tables, shelters, parking sites, and/or grills. All designated campsites are identified by a BLM map or sign.

Developed recreational site means any site or area that contains structures or capital improvements primarily used by the public for recreation purposes. Such areas or sites may include: delineated spaces or areas for parking, camping or boat launching; sanitation facilities; potable water; grills or fire rings; tables; or controlled access.

Off-highway vehicle (OHV) means any motorized vehicle capable of or designated for travel on or immediately over land, water, or other natural terrain, excluding: (1) Any non-amphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (4) vehicles in official use; and (5) any combat or combat-support vehicle when used in times of national defense emergencies.

Penalties: Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined up to $1,000 or imprisoned for no more than 12 months.

Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Peter J. Ditton,

Acting Idaho BLM State Director.

[FR Doc. 2010–21720 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTG02000.L14300000. FR0000.241A.00; UTU–83290]

Notice of Realty Action; Recreation and Public Purposes Act Classification for Conveyance of Public Land in Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance to Emery County under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, a parcel of public land in Emery County, Utah. Emery County proposes to expand their existing landfill.

DATES: Interested parties may submit written comments regarding this classification for conveyance of public land until October 15, 2010.

ADDRESSES: Comments may be submitted to the Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501 or via e-mail: *UT_PR_Comments@blm.gov.* Please reference "Conveyance of Federal Land to Emery County for Expansion of an Existing Landfill" on all correspondence.

FOR FURTHER INFORMATION CONTACT: Connie Leschin, BLM Price Field Office at (435) 636–3610 or by e-mail at *Connie_Leschin@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM has examined and found the following described public land suitable for classification and conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*), and 43 CFR part 2740:

Salt Lake Meridian

T. 18 S., R. 8 E.,
Sec. 9, SE¼;.

The area described contains 160 acres in Emery County.

The land is not needed for any Federal purpose. The classification is consistent with the BLM Price Resource Management Plan, Lands and Realty Decision LAR–11, dated October 31, 2008, and is in the public interest. An environmental assessment has been prepared that analyzes the Emery County application and proposed plans of development and management. A conveyance would be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, including, but not limited to 43

CFR subpart 2743 and the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe including all necessary access and exit rights.

A conveyance would also be subject to the following terms and conditions:

1. All valid existing rights.

2. An indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the land.

3. A limited reversionary provision stating that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date 5 years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

Upon publication of this notice in the **Federal Register**, the lands described above are segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the expansion of the existing county landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use (or uses) of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with state and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, or any other factors not directly related to the suitability of the land for a county landfill.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM State Director will review any adverse comments. In the absence of any adverse comments, the classification will become effective November 1, 2010.

The lands will not be available for conveyance until after the classification becomes effective, and until a determination of significance and decision record have been signed for the completed Environmental Assessment.

Authority: 43 CFR 2741.5(h).

Approved:

Jeff Rawson,

Associate State Director.

[FR Doc. 2010–21717 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Daniel Boone National Forest, Kentucky

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

ACTION: Notice and request for comment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are providing opportunity for the public to comment on a request for a determination of valid existing rights (VER) to conduct surface coal mining operations on approximately 175 acres of land owned by the U.S. Forest Service within the Daniel Boone National Forest in Clay County, Kentucky.

DATES: We will accept electronic or written comments until 4 p.m. Eastern time on September 30, 2010. Requests for an extension of the comment period must be received by the same time.

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

- *Mail/Hand-Deliver/Courier:* Joseph L. Blackburn, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503.
- *E-mail: jblackburn@osmre.gov.*

For detailed instructions on submitting comments, see "V. How do I submit comments on the request?" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Joseph L. Blackburn, Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. *Telephone:* (859) 260–3900. *Fax:* (859) 260–8410. *E-mail: jblackburn@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the nature of the VER determination request?
II. What legal requirements apply to this request?
III. What information is available relevant to the basis for the request?
IV. How will we process the request?
V. How do I submit comments on the request?

I. What is the nature of the VER determination request?

On June 7, 2010, the law offices of Napier & Associates, P.S.C., submitted a request on behalf of Jack Smith, Jerry Smith and Leovie Smith, for a determination of VER to conduct surface coal mining operations on approximately 175 acres of land owned by the U.S. Forest Service within the Daniel Boone National Forest in Clay County, Kentucky. Jack Smith, *et al.* is seeking a determination of VER pursuant to the "good faith/all permits" standard in accordance with 30 CFR 761.16(b)(2).

II. What legal requirements apply to this request?

Section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1272(e)(2), prohibits surface coal mining operations on Federal lands within the boundaries of any national forest, with two exceptions. The first exception pertains to surface operations and impacts incidental to an underground coal mine. The second relates to surface operations on lands within national forests west of the 100th meridian. Neither of those exceptions applies to the request now under consideration.

The introductory paragraph of section 522(e) also provides two general exceptions to the prohibitions on surface coal mining operations in that section. Those exceptions apply to operations in existence on the date of enactment of the Act (August 3, 1977) and to land for which a person has VER. SMCRA does not define VER. We subsequently adopted regulations defining VER and clarifying that, for lands that come under the protection of 30 CFR 761.11 and section 522(e) after the date of enactment of SMCRA, the applicable date is the date that the lands came under protection, not August 3, 1977.

On December 17, 1999 (64 FR 70766–70838), we adopted a revised definition of VER, established a process for submission and review of requests for VER determinations, and otherwise modified the regulations implementing

section 522(e). At 30 CFR 761.16(a), we published a table clarifying which agency (OSM or the State regulatory authority) is responsible for making VER determinations and which definition (State or Federal) will apply. That table specifies that OSM is responsible for VER determinations for Federal lands within national forests and that the Federal VER definition in 30 CFR 761.5 applies to those determinations.

At 30 CFR 761.16(b) we published the information needed for OSM to make a determination of VER, which includes information required for a "property rights demonstration" in accordance with 30 CFR 761.16(b)(1) and the "good faith/all permits" standard in accordance with 30 CFR 761.16(b)(2) or the "needed for and adjacent" standard in accordance with 761.16(b)(3).

Jack Smith, *et. al.* is seeking a VER determination pursuant to the "good faith/all permits" standard in accordance with 30 CFR 761.16(b)(2). This standard requires the applicant to show that it has obtained, or made a good faith effort to obtain, all permits and other authorizations required to conduct surface coal mining operations, before the land came under the protection of 30 CFR 761.11(b).

III. What information is available relevant to the basis for the request?

The following information has been submitted by Napier & Associates on behalf of Jack Smith, Jerry Smith and Leovie Smith:

1. A legal description of the land to which the request pertains in the form of a deed dated June 6, 1951, deed book 103, page 215, from Joe D. Smith and Mallie Smith, to A.C. Smith, Jack Smith, and Jerry Smith.

2. Several deeds documenting the chain of title for the surface and mineral estates subject to the VER request, specifically a deed of Guardian dated December 7, 1961, deed book 120, page 189, between Mallie Hyde, guardian of the estates of Jack and Jerry Smith, minors, the sellers, and A.C. Smith, the purchaser; a deed dated March 8, 1969, deed book 133, page 163, between A.C. Smith and Leovie Smith and Darby and Josephine Jackson; and a deed dated December 1, 1977, deed book 158, page 457, between Darby and Josephine Jackson and the United States of America.

3. A letter, dated February 19, 1969, from T.R. Frazier, District Ranger, to Ambrose C. Smith, regarding a land purchase option and contract.

4. A request for a mineral report regarding Forest Service Tract 758 dated September 22, 1976.

5. A mineral report and Tract map regarding U.S. Tract 758 on the DBNF dated March 2, 1977, in Clay County, Ky.

6. A Land Purchase Option and Contract—Darby Jackson et. al. & USA dated April 20, 1977, for Tract 758 on the DBNF.

7. A survey plat of Tract 758 dated August, 1977.

8. A map for a strip and auger mine permit #09243–2 in the name of Mountain Clay, Inc., dated May 15, 1970.

9. A Ky. DNR Strip mining permit application, permit #3472–74, in the name of Mark IV Coal Co., Inc., dated October 30, 1974.

10. A Ky. DNR permit #3472–74 to engage in strip mining of coal in the name of Mark IV Coal Co., Inc., effective November 12, 1974.

11. A bond release map in the name of Mark IV Coal Co., Inc., permit #3472–74, dated April 17, 1978.

12. Ky DNR Letter to USDA Forest Service dated December 20, 1978, indicating satisfactory reclamation on the Mark IV Coal Co. Permit #3472–74.

IV. How will we process the request?

We received the request on June 7, 2010, and determined that it was administratively complete on June 17, 2010. That review did not include an assessment of the technical or legal adequacy of the materials submitted with the request.

The process by which we will further review the request is set out in 30 CFR 761.16(d) and (e). As required by 30 CFR 761.16(d)(1), we are publishing this notice to seek public comment on the merits of the request. A similar notice will also be published in a newspaper of general circulation in Clay County, Kentucky.

After the close of the comment period, we will review the materials submitted with the request, all comments received in response to this and other notices, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, we will notify the requester, in writing, explaining the inadequacy of the record and requesting submittal, within a specified time, of any material needed to remedy the deficiency.

Once the record is complete and adequate, we will determine whether the requester has demonstrated VER for the proposed surface coal mining operations. Our decision document will contain findings of fact and conclusions, along with an explanation of the reasons for our conclusions. We will publish a notice of the decision in the **Federal Register** and a newspaper of general circulation in Clay County, Kentucky.

However, as provided in 30 CFR 761.16(d)(1)(iv), we will not make a decision on the merits of the request, if, by the close of the comment period under this notice or the notice required by 30 CFR 761.16(d)(3), a person with a legal interest in the land to which the request pertains initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the request.

V. How do I submit comments on the request?

We will make the VER determination request and associated materials available to you for review as prescribed in 30 CFR 842.16, except to the extent that the confidentiality provisions of 30 CFR 773.6(d) apply. Subject to those restrictions, you may review a copy of the request for the VER determination and all comments received in response to this request at the Lexington Field Office (*see* **ADDRESSES**). Documents contained in the administrative record are available for public review at the Field Office during normal business hours, Monday through Friday, excluding holidays.

Electronic or Written Comments

If you wish to comment on the merits of the request for a VER determination, please send electronic or written comments to us at the addresses above (*see* **ADDRESSES**) by the close of the comment period (*see* **DATES**). Under 30 CFR 761.16(d)(1)(vii), you may request a 30-day extension of the comment period. Requests for extension of the public comment period must be submitted to the same addresses by the date indicated.

If you submit comments by E-mail, please include your name and return address in your message. You may contact the Lexington Field Office at (859) 260–3900 if you wish to confirm receipt of your message.

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 your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 30, 2010.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2010–21645 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

Notice is hereby given that on August 25, 2010, a proposed Consent Decree ("Consent Decree") in *United States* v. *City of Revere, Massachusetts,* Civil Action No. 1:10–cv–11460 was lodged with the United States District Court for the District of Massachusetts.

In a complaint, filed simultaneously with the Decree, the United States alleges that the City of Revere, Massachusetts ("City") violated Sections 301 and 308 of the Clean Water Act, 33 U.S.C. 1311 and 1318, as a result of unauthorized discharges of pollutants including raw sewage from the City's sanitary sewer system and its separate storm sewer system, as well as a failure to report sanitary sewer overflows to the United States Environmental Protection Agency. The proposed Consent Decree resolves the United States' claims for civil penalties and injunctive relief, as alleged in the complaint. Specifically, the proposed Consent Decree requires the City to implement remedial measures, including necessary upgrades to its sanitary sewer system and separate storm sewer system, over a period of approximately twelve years and at an estimated cost of approximately $50 million. The Consent Decree also requires the City to pay a $130,000 civil penalty.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, United States Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Revere, Massachusetts,* D.J. Ref. 90–5–1–1–09299.

The Consent Decree may be examined at the Office of the United States Attorney, One Courthouse Way, John Joseph Moakley Courthouse, Boston, Massachusetts 02210, and at U.S. EPA Region 1, Office of Regional Counsel, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check to cover the 25 cents per page reproduction costs in the amount of $16.25 (for Decree without appendix) or $71.75 (for Decree with appendix) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–21569 Filed 8–30–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 003–2010]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the United States Department of Justice (Department), Federal Bureau of Investigation (FBI), proposes to establish a new system of records, the Data Integration and Visualization System, JUSTICE/FBI–021, to support and enhance data search, integration, presentation, and storage capabilities in support of the FBI's multifaceted mission.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by September 30, 2010.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the Department of Justice, *Attn:* Privacy Analyst, Office of Privacy and Civil Liberties, U.S. Department of Justice, National Place Building, 1331 Pennsylvania Ave, NW., Suite 940, Washington, DC 20530–0001, or by facsimile at 202–307–0693.

FOR FURTHER INFORMATION CONTACT: Erin Page, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, Washington, DC 20535–0001, telephone 202–324–3000.

SUPPLEMENTARY INFORMATION: Threats from terrorism, espionage, cyber attacks and more traditional crimes continue to jeopardize the well-being of our nation and its citizens while criminals continue to find new and inventive ways to carry out their reprehensible activities. To stay ahead of the threats the FBI continually searches for ways to more effectively understand the danger posed by those who threaten harm. The FBI has available a number of lawfully collected databases that allow it to conduct investigations and analyze intelligence for this purpose. Historically, FBI personnel searched individual databases to extract relevant information and then compared the extract to other available information in order to form a more complete and accurate threat picture. This was a time-consuming process and led to possible gaps in the collated information.

Continued threats to the national security of the United States and criminal events have strengthened the FBI's resolve to develop more efficient methods to analyze FBI data. The Data Integration and Visualization System, DIVS, will allow authorized system users to more effectively search, integrate, display, maintain, and record relevant information in support of the FBI's multifaceted mission. DIVS will provide users with the ability to simultaneously conduct searches across several databases, extract information, and present the integrated results in a format that the user may sort and display in various modes. In order to do this, DIVS will contain replications of some databases while providing the ability to perform federated queries across other databases. DIVS will allow users to save their queries as well as create a separate record of relevant identifiers and information. One of the results of DIVS will be a new set of records that offers an enhanced view of information already contained in FBI holdings.

DIVS will provide a single user interface that incorporates the rules of behavior for FBI information systems, tools to ensure access controls based on roles and data attributes, entity resolution and appropriate metadata tagging. These tools will help ensure data accuracy and reliability.

To enhance the flexibility of the system, DIVS includes a variety of routine uses that the FBI has used successfully in sharing information from its other record systems. The FBI will

share information learned through DIVS pursuant to the requirements of the Privacy Act and, in the case of its routine uses, when the disclosure is compatible with the purpose for which the information was compiled.

In accordance with Privacy Act requirements of 5 U.S.C. 552a(r), the Department has provided a report to OMB and to Congress on this new system of records.

Dated: August 20, 2010.

Nancy C. Libin,

Chief Privacy and Civil Liberties Officer.

JUSTICE/FBI–021

SYSTEM NAME:

Data Integration and Visualization System (DIVS).

SYSTEM CLASSIFICATION:

Classified, unclassified—law enforcement sensitive, and unclassified.

SYSTEM LOCATION:

Records may be maintained at any location at which the Federal Bureau of Investigation (FBI) operates or at which FBI operations are supported, including: J. Edgar Hoover Building, 935 Pennsylvania Ave., NW., Washington, DC 20535–0001; FBI Academy and FBI Laboratory, Quantico, VA 22135; FBI Criminal Justice Information Services (CJIS) Division, 1000 Custer Hollow Rd., Clarksburg, WV 26306; and FBI field offices, legal attaches, information technology centers, and other components listed on the FBI's internet Web site, *http://www.fbi.gov.* Some or all system information may also be duplicated at other locations for purposes of system backup, emergency preparedness, and/or continuity of operations. Additionally, appropriate offices/employees within the Department of Justice that have an official need to know the information contained in DIVS in order to perform their duties, may also be granted direct access to DIVS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system encompass all individuals who relate in any manner to authorized FBI investigative mission activities, including individuals identified in any of multiple data sets lawfully collected and/or shared with the FBI. These individuals include, but are not limited to subjects, suspects, victims, witnesses, complainants, informants, sources, bystanders, law enforcement personnel, intelligence personnel, other responders, administrative personnel, consultants, relatives, and associates who are relevant to an investigation.

In addition, the categories of individuals covered by this system also include persons who are authorized to access and use DIVS.

CATEGORIES OF RECORDS IN THE SYSTEM:

DIVS contains replications and extractions of information maintained by the FBI in other databases. This information is replicated or extracted into DIVS in order to provide an enhanced and integrated view of that information. DIVS also provides analytic tools that can be applied across the multiple data sets in order to integrate and visually display, and maintain and record the resultant information. Information concerning individuals may be acquired in connection with and relating to the varied mission responsibilities of the FBI. Depending on the nature and scope of the matter, this information may include, among other things: biographical information (such as name, alias, race, sex, date of birth, place of birth, social security number, driver's license number, other identification numbers, addresses, telephone numbers, physical description, photographs); biometric information (such as fingerprints); associates and affiliations; employment and business information; financial information; visa and immigration information; travel; criminal and investigative history; and any other information lawfully acquired by the FBI.

DIVS contains records regarding authorized system users, including audit log information and records relating to verification or authorization of an individual's access to one or more databases. This information includes user name, date and time of use, date and time of each searched query, search terms and filters, results that the user accessed, and a user's permissions and authorizations for particular data at that time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority for FBI mission activities includes: 28 U.S.C., Chapter 33, particularly sections 533 and 534; the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, 115 Stat. 272; the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3742; the Foreign Intelligence Surveillance Act of 1978 (FISA), Public Law 95–511, 92 Stat. 1783 (50 U.S.C., Chapter 36); E.O. 13356; E.O. 13388; 28 CFR 0.85; and Attorney General's Guidelines for Domestic FBI Operations. Supplemental authorities relating to particular mission activities are found in numerous other Federal statutes, executive orders, Federal regulations, and other Executive Branch directives.

PURPOSE(S):

The purpose of DIVS is to strengthen and improve the methods by which the FBI searches for and analyzes information in support of its multifaceted mission responsibilities to protect the nation against terrorism and espionage and investigate criminal matters. DIVS will provide users with the ability simultaneously to conduct searches across multiple databases (some of which are ingested directly into and exist in DIVS and others of which are searched via DIVS's federated query capability), extract and integrate information, and present the results in a format that the user may sort and display in various modes. DIVS also provides analytic tools that can be applied across the multiple data sets in order to integrate and visually display, maintain, and record the resultant information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FBI as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

B. To any criminal, civil, or regulatory law enforcement authority (whether federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

C. To a governmental entity lawfully engaged in collecting law enforcement,

law enforcement intelligence, or national security intelligence information for such purposes.

D. To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such a threat.

E. To any person or entity if deemed by the FBI to be necessary in order to elicit information or cooperation from the recipient for use by the FBI in performance of an authorized law enforcement activity.

F. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

G. To appropriate officials and employees of a federal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

H. To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

I. In an appropriate proceeding before a court, a grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

J. To an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy or other threat, to the extent the information is relevant to the protection of life, health, or property. Information may be similarly disclosed to other recipients who share the same interests as the target or who may be able to assist in protecting against or responding to the activity or conspiracy.

K. In any health care-related civil or criminal case, investigation, or matter, information indicating patient harm, neglect, or abuse, or poor or inadequate quality of care, at a health care facility or by a health care provider, may be disclosed as a routine use to any federal, state, local, tribal, foreign, joint, international, or private entity that is responsible for regulating, licensing, registering, or accrediting any health care provider or health care facility, or enforcing any health care-related laws or regulations. Further, information indicating an ongoing quality of care problem by a health care provider or at a health care facility may be disclosed to the appropriate health plan. Additionally, unless otherwise prohibited by applicable law, information indicating patient harm, neglect, abuse, or poor or inadequate quality of care may be disclosed to the affected patient or his or her representative or guardian at the discretion of and in the manner determined by the agency in possession of the information.

L. Information relating to health care fraud may be disclosed to private health plans, or associations of private health plans, and health insurers, or associations of health insurers, for the following purposes: To promote the coordination of efforts to prevent, detect, investigate, and prosecute healthcare fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans.

M. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

N. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

O. To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

P. To federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

Q. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

R. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

S. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

T. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

U. To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DOJ has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize or remedy such harm.

V. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)), and, during Presidential transitions, the President-Elect and Vice-President Elect and their designees for appointment, employment, security, and access purposes compatible with the purposes for which the records were collected by the FBI, e.g., disclosure of information to assist the White House in making a determination whether an individual should be: (1) Granted, denied, or

permitted to continue in employment on the White House Staff; (2) given a Presidential appointment or Presidential recognition; (3) provided access, or continued access, to classified or sensitive information; or (4) permitted access, or continued access, to personnel or facilities of the White House/EOP complex. System records may be disclosed also to the White House and, during Presidential transitions, to the President-Elect and Vice-President Elect and their designees, for Executive Branch coordination of activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President-Elect, Vice-President or Vice-President Elect.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper and/or in electronic form. Records are stored securely in accordance with applicable executive orders, statutes, and agency implementing recommendations.

RETRIEVABILITY:

Information is retrieved by an individual's name or other identifying information.

SAFEGUARDS:

Information in this system is safeguarded in accordance with appropriate laws, rules, and policies, including the FBI's automated systems security and access policies, and access to such information is limited to Department personnel, contractors, and other personnel who have an official need for access in order to perform their duties. Records are maintained in a restricted area and directly accessed only by authorized personnel. Electronic records are accessed only by authorized personnel with accounts on the FBI's computer network. Additionally, direct access to certain information may be restricted depending on a user's role and responsibility within the system. Paper records are safeguarded in accordance with appropriate laws, rules, and policies based on the classification and handling restrictions of the particular document.

RETENTION AND DISPOSAL:

Records are retained during their useful life in accordance with the records retention schedules approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 935 Pennsylvania Ave NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as Record Access Procedures.

RECORDS ACCESS PROCEDURE:

The Attorney General has exempted this system of records from the notification, access, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) and/or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the FBI in its sole discretion.

All requests for access should follow the guidance provided on the FBI's Web site at *http://foia.fbi.gov/requesting_records.html.* Individuals may mail, fax, or email a request, clearly marked "Privacy Act Request," to the Federal Bureau of Investigation, *Attn:* FOI/PA Request, Record/Information Dissemination Section, 170 Marcel Drive, Winchester, VA 22602–4843; *Fax:* 540–868–4995/6/7; *E-mail:* (scanned copy) *foiparequest@ic.fbi.gov.* The request should include a general description of the records sought and must include either a completed Department of Justice Certification of Identity Form, DOJ–361, which can be located at the above link, or a letter that has been notarized which includes: the requester's full name, current and complete address, and place and date of birth. In the initial request the requester may also include any other identifying data that the requester may wish to furnish to assist the FBI in making a reasonable search. The request should include a return address for use by the FBI in responding; requesters are also encouraged to include a telephone number to facilitate FBI contacts related to processing the request. A determination of whether a record may be accessed will be made after a request is received.

CONTESTING RECORDS PROCEDURE:

Same as Record Access Procedures. Individuals desiring to contest or amend information maintained in the system should also state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are derived from FBI case files and other law enforcement and intelligence records as well as data sets lawfully obtained from other agencies and entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system of records from subsection (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), and (3); (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g) of the Privacy Act. These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in today's **Federal Register**.

[FR Doc. 2010–21248 Filed 8–30–10; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts Thomas on 202–693–4223 (this is not a toll-free number); e-mail mail to: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, *Telephone:* 202–395–4816/*Fax:* 202–395–5806 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov* within

30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed.

OMB Control Number: 1219–0144.

Affected Public: Business or other for-profit.

Total Estimated Number of Respondents: 2,055.

Total Number of Responses: 24,767.

Total Estimated Annual Burden Hours: 5,181.

Total Estimated Annual Cost Burden (operating/maintaining): $863,397.

Description: MSHA published a final rule revising the Agency's requirements for mine rescue teams for underground coal mines on February 8, 2008.

Background: The United Mine Workers of America challenged the final rule in the U.S. Court of Appeals for the District of Columbia Circuit (Court). On February 10, 2009, the Court vacated several of the rule's provisions. Consistent with the Court's decision, MSHA revised its requirements for mine rescue teams for underground coal mines on June 17, 2009. The 2008 mine rescue team standard and 2009 revision added burden to existing information collection requirements and imposed two new information collection requirements.

MSHA last submitted paperwork package 1219–0144 to OMB in May 2009, under the emergency review procedures in 5 CFR 1320.13.

Section 4 of the Mine Improvement and New Emergency Response (MINER) Act of 2006 required MSHA to promulgate standards for mine rescue teams for underground coal mines. The May 2009 paperwork package 1219–0144 addressed only the increased burden associated with the revised and new standards and did not include the information collection burden for the existing mine rescue team standard not addressed by the MINER Act, which had been approved under paperwork package 1219–0078 for both coal and metal and nonmetal mines. This paperwork package 1219–0144 combines the additional burden from the revised and new standards for underground coal mine rescue teams with the existing information collection burden, which has been removed from paperwork package 1219–0078. (The metal and nonmetal mine rescue team paperwork package, OMB control number 1219–0078, has been extended to February 28, 2013, ICR reference number 200912–1219–003.)

This package covers the following requirements for coal mines:

- Each operator of a coal mine who provides rescue teams is required to send the District Manager a statement describing the mine's method of compliance with the standard.
- Small or remote mines may submit an application of an arrangement for alternative mine rescue capability to MSHA for approval.
- A person trained in the use and care of the breathing apparatus is required to certify by signature and date that the required inspections and tests were done, take corrective action if indicated, and record any corrective action taken.
- Each member of a mine rescue team must be examined annually by a physician who must certify that each person is physically fit to perform mine rescue and recovery work.
- A record of the training received by each mine rescue team member in the use, care, and maintenance of the type of breathing apparatus that will be used by the mine rescue team must be made and kept on file at the mine rescue station for a period of one year. The operator must provide the District Manager information concerning the schedule of upcoming training when requested.
- Each mine must have a mine rescue notification plan outlining the procedures to be followed in notifying the mine rescue teams when there is an emergency that requires their services.
- Underground coal mine operators must certify that each designated coal mine rescue team meets the requirements of 30 CFR part 49 subpart B.
- Coal mine operators must make arrangements for 24-hour emergency medical assistance and transportation for injured persons and to post this information at appropriate places at the mine, including the names, titles, addresses, and telephone numbers of all persons or services currently available under those arrangements. For additional information, see related notice published in the **Federal Register** on April 13, 2010 (Vol. 75 page 18888).

Dated: August 24, 2010.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2010–21580 Filed 8–30–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Submission for OMB Emergency Review: Comment Request

August 24, 2010.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA95) (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by September 16, 2010. A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of responses, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts-Thomas on 202–693–4223 (this is not a toll-free number)/*e-mail: DOL_PRA_PUBLIC@dol.gov.* Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—BLS, Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7314/Fax: 202–395–6974 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.* Comments and questions about the ICR listed below should be received 5 days

prior to the requested OMB approval date.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of currently approved collection.

Title of Collection: National Compensation Survey.

OMB Control Number: 1220–0164.

Affected Public: Private sector establishments and State and local governments.

	Total respondents	Frequency	Total annual responses	Average minutes per response	Burden hours
Private Sector	34,929	Annual	63,508	46.58	49,303
State and Local Governments	4,974	Annual	10,312	34.92	6,002
Totals to NCS Program	39,904		73,820		55,305

Total Burden Cost: (capital/startup): $0.

Total Burden Cost: (operating/maintenance): $0.

Description: The National Compensation Survey (NCS) is an ongoing survey of earnings and benefits among private firms, State, and local government. NCS is the integration of the sampling, collection, and processing for the Employment Cost Index (ECI), the Employee Benefits Survey (EBS), and the Locality Pay Surveys (LPS) into a single, unified program of compensation statistics. This integration improves data for policymakers and researchers, reduces respondent burden, improves the utilization of BLS resources, and enhances the published measures of compensation. Data from the integrated program include estimates of wages by job levels covering broad groups of related occupations, and data that directly links benefit plan costs with detailed plan provisions. The integrated program's single sample also produces both time-series indexes and cost levels for industry and occupational groups, thereby increasing the analytical potential of the data. Benefits of the integrated sample include: improved measures of trends; better integration of benefit costs and plan provisions; data for narrow occupations; and broad regional and occupational coverage. NCS employs probability methods for selection of occupations. This ensures that sampled occupations represent all occupations in the workforce, while minimizing the reporting burden on respondents. Data from the NCS are critical for setting Federal white-collar salaries, determining monetary policy (as a Principal Federal Economic Indicator), and for compensation administrators and researchers in the private sector. The survey collects data from a sample of employers. The data consist of information about the duties, responsibilities, and compensation (earnings and benefits) for a sample of occupations for each sampled employer.

The NCS is proposing to add two questions on domestic partner benefits. This collection timeline will allow data on domestic partner benefits to be published in 2011. These questions will only be asked of wage and benefits sample members who offer defined benefit (DB) and/or health benefits to their employees. Currently in private industry DB plans are offered in 11% of establishments and health benefits to 63%. In State and local governments DB access is 84% and health benefits access is 88%. These two questions will add approximately 180 hours annually to private industry sample respondent burden hours (14,614 total sample of private establishments). For the government sample these two questions will add approximately 62 hours annually to government respondent burden hours (2,164 total sample of State and local government establishments).

Why are we requesting Emergency Processing? Emergency clearance is being sought for the National Compensation Survey for the purpose of the addition of two questions on domestic partner benefits to the existing "Other Benefits" questions. The Department of Labor's LGBT (Lesbian, Gay, Bisexual, and Transgender) roundtable and recent Congressional actions on the proposed Domestic Partnership Benefits and Obligations Act (HR 2517) have greatly increased the need for information on domestic partner benefits in both private industry and State and local governments. In order for BLS to produce data in 2011, NCS data collection of these questions must begin in September 2010 during the NCS collection quarter (which starts September 16, 2010).

The BLS will submit an ICR immediately following this approval, as the current NCS package expires in January 2011. This ICR will be submitted to OMB under the standard clearance process and will give the public a second opportunity chance to comment on this collection in accordance with PRA95 (44 USC 3506).

Linda Watts-Thomas,

Acting, Departmental Clearance Officer.

[FR Doc. 2010–21617 Filed 8–30–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

Cooperative Agreements Under the Disability Employment Initiative; Solicitation for Grant Applications (SGA) SGA–DFA–PY–10–01; Amendment Number 1

AGENCY: Employment and Training Administration (ETA), U.S. Department of Labor.

ACTION: Notice: Amendments, revision of phone number for grants management specialist, and revision of point value for one criterion.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of August 9, 2010, announcing the availability of funds and solicitation for grant applications for the Disability Employment Grants. This amendment makes changes to the August 9 document by correcting this Solicitation.

DATES: *Key Dates:* The deadline for submission of applications under this announcement is September 8, 2010. Applications must be received no later than 4 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Eileen Banks, Grants Management Specialist, Telephone (202) 693–3403.

Amendment

In the **Federal Register** of August 9, 2010, in FR Volume 75, No. 152, the solicitation is amended with the following:

1. This amendment is to correct the phone number for Eileen Banks, Grants Management Specialist. On Page 47839, Section VII. Agency Contacts, *delete the following text:* For further information regarding this SGA, please contact Eileen Banks, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3401 (please note this is not a toll-free number). *Add the following text:* For further information regarding this SGA, please contact Eileen Banks, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3403 (please note this is not a toll-free number).

2. This amendment is to correct language related to the number of points for Project Management to be consistent with points listed in the Criterion Table in Section V.A., page 47835. On Page 47837, Section V.A. *Delete the following text:* 4. Project Management (10 points) *Add the following text:* Project Management (15 points)

3. This amendment is to correct language related to the number of points for Project Management to be consistent with points listed in the Criterion Table in Section V.A., page 47835. On Page 47837, Section V.A.4. *Delete the following text: The 10 possible points for this criteria will be assessed as follows: Add the following text: The 15 possible points for this criteria will be assessed as follows:*

4. This amendment is to correct language related to the number of points for Project Management to be consistent with points listed in the Criterion Table in Section V.A., page 47835. On Page 47837, Section V.A.4. *Delete the following text: Staff Capacity (5 points) Add the following text: Staff Capacity (8 points)*

5. This amendment is to correct language related to the number of points for Project Management to be consistent with points listed in the Criterion Table in Section V.A., page 47835. On Page 47837, Section V.A.4. *Delete the following text: Fiscal and Administrative Capacity (5 points) Add the following text: Fiscal and Administrative Capacity (7 points)*

Signed at Washington, DC, this 25th day of August 2010.

B. Jai Johnson,

Grant Officer, Employment & Training Administration.

[FR Doc. 2010–21585 Filed 8–30–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–100)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is an application form to be considered for a summer internship. Students are required to submit an application package consisting of an application form, a personal essay describing career goals, a parent/guardian permission form for parents to sign approving the child's participation, and a teacher recommendation.

II. Method of Collection

NASA will utilize a Web-base application form with instructions and other application materials also on-line. However, once the application form and other application materials are down loaded and filled out, the package is mailed in to NASA.

III. Data

Title: INSPIRE (Interdisciplinary National Science Program Incorporating Research and Education Experience) Application.

OMB Number: 2700–0133.

Type of Review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 4000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

Acting Deputy Chief Information Officer.

[FR Doc. 2010–21683 Filed 8–30–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–099)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(C)(2)(A)).

DATES: All comments should be submitted within September 30, 2010.

ADDRESSES: All comments should be addressed Lori Parker, Office of the Chief Information Officer, Mail Suite 2S65, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 2S65, Washington, DC 20546, (202) 358–1351, *lori.parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Office of Public Affairs wants an electronic method to provide scheduling and notification of NASA events that allow them to track and manage these request for events.

II. Method of Collection

Electronic.

III. Data

Title: Special Events Guest System (SEGS).

OMB Number: 2700–XXXX.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11000.

Estimated Time per Response: Voluntary.

Estimated Total Annual Burden Hours: 1100.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–21687 Filed 8–30–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–097)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed Lori Parker, Office of the Chief Information Officer, Mail Suite 2S65, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 2S65, Washington, DC 20546, (202) 358–1351, *lori.parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract:

The purpose of this survey is to assimilate lunar regolith stimulant requirements as well as Apollo sample requests for the ETDP and Constellation projects and test facilities.

II. Method of Collection

Electronic.

III. Data

Title: Lunar Regolith & Stimulant Users' Survey for the In Situ Resource Utilization Web site.

OMB Number: 2700—XXXX).

Type of Review: Regular.

Affected Public: Individuals and household.

Estimated Number of Respondents: 31.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 2.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–21690 Filed 8–30–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–098)]

NASA Advisory Council; Commercial Space Committee; 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 Commercial Space Committee of the NASA Advisory Council.

DATES: Tuesday September 14, 8 a.m. to 12 noon CDT.

ADDRESSES: NASA Johnson Space Center, Building 1, Room 966.

FOR FURTHER INFORMATION CONTACT: Mr. John Emond, Innovative Partnerships Program, Office of the Chief Technologist, National Aeronautics and Space Administration, Washington, DC 20546. Phone 202–358–1686, *fax:* 202–358–3878, *john.l.emond@nasa.gov.*

SUPPLEMENTARY INFORMATION: The intent of this meeting is to brief the Space Operations Committee of the NASA Advisory Council on recent

deliberations by the Commercial Space Committee, and to exchange information on matters of mutual interest regarding commercial cargo and crew planning efforts. The Commercial Space Committee will also attend a briefing by NASA officials to the Space Operations Committee following the joint discussion. 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 Mr. John Emond at *john.l.emond@nasa.gov,* if you plan to attend.

August 25, 2010.

P. Diane Rausch,

Advisory Committee Management Office, National Aeronautics and Space Administration.

[FR Doc. 2010–21689 Filed 8–30–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–096)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; 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 (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, September 20, 2010, 9 a.m. to 5:30 p.m., Local Time; and Tuesday, September 21, 2010, 9 a.m. to 3 p.m., Local Time

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 3H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status
—Status of Solar Probe Mission
—Role of Virtual Observatories to Upcoming Heliophysics Missions
—Research and Analysis Program
—Report from Workshop on Advanced Computational Capabilities for Exploration in Heliophysical Science (ACCEHS)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: August 25, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–21692 Filed 8–30–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Meeting Notice

TIME AND DATE: 11:30 a.m., Friday, September 3, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matters To Be Considered

1. *Supervisory Activities (4).* Closed pursuant to some or all of the following exemptions: (8), (9)(A)(i), (ii) and (9)(B).

2. *Contract negotiation.* Closed pursuant to one or all of the following exemptions: (2) and (4).

3. *Delegation of Authority.* Closed pursuant to the following exemption: (9)(A)(i), (ii).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Linda K. Dent,

Acting Board Secretary.

[FR Doc. 2010–21858 Filed 8–27–10; 4:15 pm]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Submission for OMB Review; Comment Request

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: *Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements.* Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *http://www.Reginfo.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Could help minimize the burden of the collection of information on those who are to respond, including through the use of electronic submission of responses through Grants.gov.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of all of its funding application guidelines and grantee reporting requirements. This entry is issued by the Endowment and

contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Agency: National Endowment for the Arts.

Title: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, government agencies, and individuals.

Estimated Number of Respondents: 5,714.

Estimated Time per Respondent: 25 hours (applications)/8 hours (reports).

Total Burden Hours: 165,637.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and government arts agencies that apply for funding from the NEA. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the review process. According to OMB Circulars A–102 and A–110, recipients of federal funds are required to report on project activities and expenditures. Reporting requirements are necessary to ascertain that grant projects have been completed, and that all terms and conditions have been fulfilled.

Kathleen Edwards,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 2010–21704 Filed 8–30–10; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of permit application received under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application from Dr. Ralph Fedor for the establishment of a temporary amateur radio campsite for up to 13 people on Waterpipe Beach, Signey Island for approximately 18 days during the 2010–2011 austral summer season. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within September 30, 2010. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Environmental Officer at the above address or (703) 292–8030.

SUPPLEMENTAL INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of a temporary amateur radio camp on Signy Island, Antarctica. Zodiacs will be used to transport equipment and personnel to the camp site. Refueling of these vehicles will take place only on the ship. The camp will consist of two Weatherport shelters (12 × 25 feet): One as a lab or radio communications center; and the other for sleeping and storage. The power generator will have double containment to prevent any fuel spills. All camp waste (wrappers, empty container, disposable items), kitchen waste (garbage, debris, waste water), and human waste (solid and liquid) will be removed and returned to Ushuaia, Argentina for disposal. All shoes, clothing, equipment taken ashore will be cleaned and disinfected prior to leaving the ship to prevent introduction of non-indigenous species.

No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Ralph Fedor, 2337 Granite View Road, Waite Park, MN 56387.

Location: Signy Island, South Orkney Islands.

DATES: January 1, 2010 to February 28, 2011

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2010–21562 Filed 8–30–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a camp at Patriot Hills, Heritage Range, southern Ellsworth Mountains, Antarctica, by Antarctic Logistics & Expeditions, LLC, a company within the United States. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within September 30, 2010. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for operation of remote camp at Union Glacier, Antarctica, and logistic support services for scientific and other expeditions, film crews, and tourists. These activities include aircraft support, cache positioning, camp and field support, resupply, search and rescue, medevac, medical support and logistic support for some National Operators. The camp can accommodate up to 100 people and is adjacent to a 100m x 2000m blue-ice runway. The blue-ice runway is a natural feature that requires limited amount of preparation and

upkeep for aircraft use. There are standard programs offered on a regular basis. These include: climbing trips to Vinson Massif, the Ellsworth Mountains and the Transantarctic Mountains; ski trips to the Ellsworth Mountains and the Geographic South Pole; and flights to the Geographic South Pole, and the Emperor Penguin Colony at the Dawson Lambton Glacier.

Several aircraft will be operated by Antarctic Logistics & Expeditions throughout the Antarctic. They may consist of the following: Twin Otter aircraft, and Ilyushin 76 (IL–76), and either a turbine DC–3 or a Cessna 185.

The permit applicant is: David Rootes, Environmental Manager, Antarctic Logistics & Expeditions, LLC, 79 West 450 South, Suite 2, Salt Lake City, Utah 84107. Permit application No. 2011 WM–002.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2010–21564 Filed 8–30–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0288]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1247, "Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants."

FOR FURTHER INFORMATION CONTACT: Robert G. Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 251–7483 or e-mail *Robert.Carpenter@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, "Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants," is temporarily identified by its task number, DG–1247, which should be mentioned in all related correspondence. DG–1247 is a proposed new regulatory guide.

This regulatory guide provides licensees and applicants with new guidance that the staff of the NRC considers acceptable for use in selecting the design-basis hurricane and design-basis hurricane-generated missiles that a nuclear power plant should be designed to withstand to prevent undue risk to the health and safety of the public. This guidance applies to the contiguous United States but does not address the determination of the design-basis hurricane and hurricane missiles for sites located along the Pacific coast or in Alaska, Hawaii, or Puerto Rico; the NRC will evaluate such determinations on a case-by-case basis. This guide also does not identify the specific structures, systems, and components that should be designed to withstand the effects of the design-basis hurricane or should be protected from hurricane-generated missiles and remain functional. Nor does this guide address other externally generated hazards, such as aviation crashes, nearby accidental explosions resulting in blast overpressure levels and explosion-borne debris and missiles, and turbine missiles.

II. Further Information

The NRC staff is soliciting comments on DG–1247. Comments may be accompanied by relevant information or supporting data and should mention DG–1247 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 October 21, 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–2010–0288 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 website 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–2010–0288. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RAD), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RAD 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–1247 is available electronically under ADAMS Accession Number ML100480890. In addition, electronic copies of DG–1247 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/.* The regulatory analysis may be found in ADAMS under Accession No. ML102310249.

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–2010–0288.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 19th day of August 2010.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–21636 Filed 8–30–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0448]

Notice of Availability of Final Interim Staff Guidance Document No. 25 "Pressure and Helium Leakage Testing of the Confinement Boundary of Spent Fuel Dry Storage Systems"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Division of Spent Fuel Storage and Transportation (SFST) of the Office of Nuclear Materials Safety and Safeguards (NMSS) is issuing its Interim Staff Guidance Document No. 25 (ISG–25) "Pressure and Helium Leakage Testing of the Confinement Boundary of Spent Fuel Dry Storage Systems." This ISG supplements standard review plan guidance for evaluating the helium leakage testing and ASME Code required pressure (hydrostatic/pneumatic) testing that is specified for the cask confinement boundary. It specifies the acceptance tests that are necessary to clearly demonstrate that the cask has been fabricated in accordance with the design criteria, and that the operation of the cask complies with the intended safety bases of the confinement system and regulatory requirements. The final ISG–25 is available in the NRC's Agencywide Documents Access and Management System (ADAMS) under the Accession No. ML101970493.

ADDRESSES: The NRC maintains an ADAMS system, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you cannot access ADAMS or if there are any problems accessing documents located in ADAMS, you should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Luis Cruz, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–492–3270 or e-mail at *Luis.Cruz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC posts its issued staff guidance on the NRC external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*). A table containing the comments received from external stakeholders and the staff responses to these comments is available in ADAMS under the Accession Number ML101970496.

Dated at Rockville, Maryland, this 18th day of August 2010.

For the Nuclear Regulatory Commission.

Deborah Jackson,

Branch Chief, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 2010–21638 Filed 8–30–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission [NRC–2010–0002].

DATE: Weeks of August 30, and September 6, 13, 20, 27, October 4, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 30, 2010

There are no meetings scheduled for the week of August 30, 2010.

Week of September 6, 2010—Tentative

There are no meetings scheduled for the week of September 6, 2010.

Week of September 13, 2010—Tentative

There are no meetings scheduled for the week of September 13, 2010.

Week of September 20, 2010—Tentative

There are no meetings scheduled for the week of September 20, 2010.

Week of September 27, 2010—Tentative

Wednesday, September 29, 2010

1 p.m.

Briefing on Resolution of Generic Safety Issue (GSI)—191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting). (Contact: Michael Scott, 301–415–0565.)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 4, 2010—Tentative

There are no meetings scheduled for the week of October 4, 2010.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: August 26, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–21835 Filed 8–27–10; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–34 and CP2010–95; Order No. 517]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently–filed Postal Service request to add Inbound Competitive Multi–Service Agreements with Foreign Postal Operators to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: August 31, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On August 13, 2010, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, to add Inbound Competitive Multi–Service Agreements with Foreign Postal Operators (Multi–Service Agreements) to the competitive product list.[1] The Postal Service asserts that Multi–Service Agreements are a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2010–34.

The Postal Service contemporaneously gave notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, that the Governors have established prices and classifications not of general applicability for Inbound Competitive Multi–Service Agreements with Foreign Postal Operators in Governors' Decision No. 10–3.[2] *Id.* at 1–2. Additionally, the Postal Service filed the first agreement (TNT Agreement) with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV, collectively "TNT Post". The TNT Agreement governs rates for Inbound Air Parcel Post (Air CP), Surface Parcel Post (Surface CP) and Express Mail Service (EMS), along with ancillary services. *Id.* at 4. The TNT Agreement has been assigned Docket No. CP2010–95.

In support of its Request, the Postal Service filed five attachments as follows:

1. Attachment 1—Statement of Supporting Justification required by 39 CFR 3020.32;
2. Attachment 2—a redacted copy of Governors' Decision No. 10–3, which establishes prices and classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, proposed descriptive Mail Classification Change (MCS) language, pricing formulas and certification of prices, and certification of the Governors' vote;
3. Attachment 3—a redacted copy of the TNT Agreement;
4. Attachment 4—a certified statement required by 39 CFR 3015.5(c)(2); and
5. Attachment 5—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal.

The Postal Service states that the Multi–Service Agreements create rates for competitive inbound International Mail exchanged between postal operators. This would include traditional mail services such as Air CP and EMS, as well as ancillary services. *Id.* at 3.

The Postal Service asserts that this product will permit the Postal Service to create pricing for any combination of products in an equivalent agreement that meets the pricing criteria of the Governors' Decision. *Id.* at 3.

The Postal Service states that the classification language also covers nontraditional services exchanged among postal operators, *e.g.,* inbound direct entry, and other services offered by a foreign postal operation to customers under terms other than those not commonly used, but which are processed and delivered similar to an existing service within the Postal Services network. *Id.* at 3–4. The Postal Service indicates that the proposed classification language would permit the establishment of unique operating terms and conditions that modify the default arrangements of the UPU. *Id.* at 4.

Related agreement. The Postal Service asserts that the terms of the TNT Agreement conform to the proposed MCS language. *Id.* The agreement, which is scheduled to commence October 1, 2010, covers two one–year periods with different rates for the second period. *Id.* The Postal Service also identifies various terms included on the TNT Agreement, *e.g.,* performance metrics and electronic settlement and payment processes and incentives for optional activities. *Id.* at 4–5.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, 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. Additionally, the Postal Service contends that its filings demonstrate compliance with 39 U.S.C. 3642(b). Ms. Emerson also states that Multi–Service Agreements are consistent with the Commission's finding in Order No. 43 that Surface CP at Non–UPU Rates, EMS and Air CP be considered competitive products. *Id.*

The Statement of Supporting Justification addresses the requirements of 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, *e.g.,* that the product is properly classified as competitive and is not subject to the Private Express Statutes. *Id.* at 5–6, Attachment 1. The Postal Service asserts that all requisite requirements have been satisfied. *Id.* at 7.

Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the TNT Agreement complies with 39 U.S.C. 3633(a). *Id.,* Attachment 2. He asserts that the prices for the TNT Agreement "should cover its attributable costs and preclude the subsidization of competitive products by market dominant products." *Id.* The Postal Service contends that the proposed classification would enhance its pricing flexibility and ease administrative burdens by enabling it to negotiate multiple inbound competitive services at once rather than filing separate agreements for regulatory review. *Id.* at 7.

The Postal Service requests that Inbound Competitive Multi–Service Agreements with Foreign Postal Operators be added as a new product to the competitive product list. *Id.* at 8. It proposes that additional functionally equivalent contracts be added to the competitive product list as price categories under the Inbound Competitive Multi–Service Agreements with Foreign Postal Operators listing. *Id.* at 6.

II. Notice of Filings

The Commission establishes Docket Nos. MC2010–34 and CP2010–95 for consideration of the Request pertaining to the proposed Inbound Competitive Multi–Service Agreements with Foreign

[1] Request of United States Postal Service to Add Inbound Competitive Multi–Service Agreements with Foreign Postal Operators to the Competitive Product List, and Notice of Filing (Under Seal) of Enabling Governors' Decision and Negotiated Service Agreement, August 13, 2010 (Request).

[2] *See* Request, Attachment 2.

Postal Operators, and the related rates and classifications, respectively. In keeping with existing practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

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 August 31, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov.*)

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2010–35, R2010–5 and R2010–6 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than August 31, 2010.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interest 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. 2010–21693 Filed 8–30–10; 8:45 am]

BILLING CODE 7710–FW–S

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb appendix, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Wednesday, September 22, 2010, at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to swear in new Board members, to approve minutes of a previous Board meeting, to elect Board officers, to provide an Executive Director's report and status reports on environmental remediation, the Public Health Service District, Doyle Drive and the Main Post, to receive a report on the provision of fire services to the Presidio by the City of San Francisco, to receive reports from the National Park Service and the Golden Gate National Parks Conservancy, to provide a preview of the Trust's fiscal year 2011 projects, and to receive public comment on other matters in accordance with the Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415–561–5300 prior to September 13, 2010.

Time: The meeting will begin at 6:30 p.m. on Wednesday, September 22, 2010.

ADDRESSES: The meeting will be held at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, *Telephone:* 415–561–5300.

Dated: August 24, 2010.

Karen A. Cook,

General Counsel.

[FR Doc. 2010–21576 Filed 8–30–10; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29399; File No. 812–13763]

The Integrity Funds, et al.; Notice of Application

August 25, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY: *Summary of Application:* The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: The Integrity Funds ("Integrity Funds"), Integrity Managed Portfolios ("Managed Portfolios"), Integrity Fund of Funds, Inc. ("Fund of Funds"), Viking Mutual Funds ("Viking Funds") (each, a "Mutual Fund" and collectively, the "Mutual Funds"), and Viking Fund Management, LLC (the "Adviser").

DATES: *Filing Dates:* The application was filed on March 30, 2010, and amended on August 10, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 20, 2010 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, Viking Fund Management, LLC, 1 Main Street North, Minot, North Dakota 58703.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel at (202) 551–6815, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Mutual Fund is registered under the Act as an open-end management investment company. Integrity Funds is organized as a Delaware statutory trust and currently offers three series (each, a "Fund" and collectively, the "Funds"), each with its own distinct investment objectives, policies and restrictions. Managed Portfolios is organized as a Massachusetts business trust and

currently offers six Funds, each with its own distinct investment objectives, policies and restrictions. Fund of Funds is organized as a North Dakota corporation and currently does not operate as a series company (included in the term "Funds"). Viking Funds is organized as a Delaware statutory trust and currently offers four Funds, each with its own distinct investment objectives, policies and restrictions.[1]

2. The Adviser, a North Dakota limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser is a wholly-owned subsidiary of Corridor Investors, LLC. The Adviser serves as investment adviser to each Fund under an investment advisory agreement (each, an "Advisory Agreement") that has been approved by the shareholders of each Fund and by the board of directors or trustees of the Mutual Funds ("Board"), including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of a Mutual Fund, the Adviser, or the Subadvisers ("Independent Board Members").[2]

3. Under the terms of each Fund's Advisory Agreement, the Adviser provides a continuous investment program for the Fund consistent with the investment objectives, policies and limitations of the Fund. For its services, the Adviser receives a fee from each Fund specified in the relevant Advisory Agreement. Under each Advisory Agreement, the Adviser may enter into investment subadvisory agreements with one or more subadvisers ("Subadvisers") who have discretionary authority to invest all or a portion of the Fund's assets pursuant to a separate subadvisory agreement ("Subadvisory Agreement"). The Adviser will evaluate, allocate assets to, and oversee Subadvisers, and recommend to the Board their hiring, termination and replacement. Each Subadviser is or will be an investment adviser registered under the Advisers Act. For its services to a Fund, the Adviser pays each Subadviser a monthly fee out of the fee paid to the Adviser by the Fund.

4. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser who is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser (other than by reason of serving as a Subadviser to one or more of the Funds) ("Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the shareholders rely on the Adviser's experience to select one or more Subadvisers best suited to achieve the Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Funds and may preclude the Adviser and the Board from acting promptly when a change in Subadvisers would benefit a Fund. Applicants note that each Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to the shareholder approval requirements of section 15(a) and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund that relies on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and to recommend their hiring, termination and replacement.

3. At all times, at least a majority of the Board will be Independent Board Members, and the nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

[1] Applicants also request relief with respect to future Funds and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (included in the term "Adviser"); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (included in the term "Funds"). The only existing registered open-end management investment companies that currently intend to rely on the requested order are named as applicants. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser.

[2] Under a prior order, the Commission granted relief to The Integrity Funds and Integrity Money Management, Inc., a wholly owned subsidiary of Integrity Mutual Funds, Inc. ("Integrity Mutual Funds") from the provisions of section 15(a) of the Act and rule 18f–2 under the Act similar to that requested in the Application. *The Integrity Funds, et al.,* Investment Company Act Release Nos. 27144 (Nov. 10, 2005)(notice) and 27180 (Dec. 6, 2005)(order). On July 31, 2009, Integrity Mutual Funds generally sold its mutual fund services business to Corridor and the Adviser. In 2009, the existing shareholders of the Funds approved the Advisory Agreements, the existing Subadvisory Agreements and the manager of managers structure.

6. Within 90 days of the hiring of any new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser that would be included in a proxy statement. To meet this condition, each affected Fund will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to the review and approval by the Board, will: (i) Set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or part of each Fund's assets; (iii) when appropriate, allocate and reallocate each applicable Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No Board Member or officer of a Mutual Fund, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–21625 Filed 8–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29400; File No. 812–13775]

Aston Funds, et al.; Notice of Application

August 26, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

SUMMARY:

Summary of the Application: The requested order would (a) permit certain registered open-end management investment companies that operate as "funds of funds" to acquire shares of certain registered open-end management investment companies and unit investment trusts ("UITs") that are within and outside the same group of investment companies as the acquiring investment companies, and (b) permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Aston Funds ("Trust") and Aston Asset Management, LP ("Adviser").

DATES:

Filing Dates: The application was filed on May 21, 2010, and amended on August 11, 2010, and August 16, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 20, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: 120 N. LaSalle Street, 25th Floor, Chicago, Illinois 60602.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Branch Chief, at (202) 551–16821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust is comprised of separate series ("Funds") that pursue distinct investment objectives and strategies.[1] Certain Funds currently pursue their investment objectives by investing primarily in other investment companies, including exchange-traded funds, in reliance on Section 12(d)(1)(F) of the Act. The Adviser, a Delaware limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser for each of the Funds.

2. Applicants request an order to permit (a) a Fund that operates as a "fund of funds" (each a "Fund of Funds") to acquire shares of (i) registered open-end management investment companies that are not part of the same "group of investment companies," within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds ("Unaffiliated Investment Companies") and UITs that are not part of the same group of investment companies as the Fund of Funds ("Unaffiliated Trusts," together with the Unaffiliated Investment Companies, "Unaffiliated Funds")[2] or (ii) registered open-end management companies or UITs that are part of the same group of investment companies as the Fund of Funds (collectively, "Affiliated Funds,"

[1] Applicants request that the relief apply to each existing and future Fund and to each existing and future registered open-end management investment company or series thereof that is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser and which is part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii)) as the Trust (included in the term "Funds").

[2] Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares to be listed and traded on a national securities exchange at negotiated prices ("ETFs").

together with the Unaffiliated Funds, "Underlying Funds") and (b) each Underlying Fund, any principal underwriter for the Underlying Fund, and any broker or dealer registered under the Securities Exchange Act of 1934 ("Broker") to sell shares of the Underlying Fund to the Fund of Funds.[3] Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

3. Applicants also request an exemption under section 6(c) from rule 12d1–2 under the Act to permit any existing or future Fund of Funds that relies on section 12(d)(1)(G) of the Act ("Same Group Fund of Funds") and that otherwise complies with rule 12d1–2 to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").

4. Consistent with its fiduciary obligations under the Act, the board of directors or trustees ("Board") of each Same Group Fund of Funds will review the advisory fees charged by the Same Group Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Fund of Funds may invest.

Applicants' Legal Analysis

Investments in Underlying Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's total outstanding voting stock, or if the sale will cause more than 10% of the acquired company's total outstanding voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit a Funds of Funds to acquire shares of the Underlying Funds in excess of the limits in section 12(d)(1)(A), and an Underlying Fund, any principal underwriter for an Underlying Fund, and any Broker to sell shares of an Underlying Fund to a Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

3. Applicants state that the terms and conditions of the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over the Unaffiliated Funds.[4] To limit the control that a Fund of Funds may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Adviser, any person controlling, controlled by, or under common control with the Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Adviser or any person controlling, controlled by, or under common control with the Adviser (the "Advisory Group") from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any other investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds ("Subadviser"), any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (the "Subadvisory Group"). Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, investment adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, Subadviser, or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the Act.

5. To further assure that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.[5]

[3] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[4] A "Fund of Funds Affiliate" is the Adviser, any subadviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by, or under common control with any of those entities. An "Unaffiliated Fund Affiliate" is an investment adviser, sponsor, promoter, or principal underwriter of an Unaffiliated Fund, as well as any person controlling, controlled by, or under common control with any of those entities.

[5] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by

6. Applicants state that they do not believe that the proposed arrangement will involve excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not "interested persons" (within the meaning of section 2(a)(19) of the Act) ("Independent Trustees"), will find that the advisory fees charged under investment advisory or management contract(s) are based on services provided that will be in addition to, rather than duplicative of, the services provided under such advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the Conduct Rules of the NASD ("NASD Conduct Rule 2830").[6]

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 11 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Fund of Funds and the Affiliated Funds might be deemed to be under common control of the Adviser and therefore affiliated persons of one another. Applicants also state that a Fund of Funds and the Unaffiliated Funds might be deemed to be affiliated persons of one another if the Fund of Funds acquires 5% or more of an Unaffiliated Fund's outstanding voting securities. In light of these and other possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act.[7] Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of the Underlying Fund.[8] Applicants state that the proposed transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act.

Other Investments by Same Group Funds of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that a Same Group Fund of Funds may invest a portion of its assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule

declining to execute the Participation Agreement with the Fund of Funds.

[6] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[7] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by a Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgment.

[8] Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Unaffiliated Fund. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) of the Act for those in-kind transactions.

12d1–2(a) to allow the Same Group Funds of Funds to invest in Other Investments. Applicants assert that permitting Same Group Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Investments by Funds of Funds in Underlying Funds

Applicants agree that the relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of an Advisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadvisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Advisory Group or a Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of the Unaffiliated Fund, then the Advisory Group or the Subadvisory Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadvisory Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that its Adviser and any Subadviser(s) to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s) or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Investment Company shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired, (b) identity of the underwriting syndicate's members, (c) terms of the purchase, and (d) information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated

Investment Company of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under such advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding and the basis upon which the finding was made will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

12. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to fund of funds set forth in NASD Conduct Rule 2830.

Other Investments by Same Group Funds of Funds

Applicants agree that the relief to permit Same Group Funds of Funds to invest in Other Investments shall be subject to the following condition:

13. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Same Group Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–21674 Filed 8–30–10; 8:45 am]

BILLING CODE 8010–01–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 Thursday, September 2, 2010 at 2 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 Thursday, September 2, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; 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: August 26, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–21798 Filed 8–27–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [to be announced].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: September 2, 2010 at 2 p.m.

CHANGE IN THE MEETING: Additional Item.

The following matter will also be considered during the 2 p.m. Closed Meeting scheduled for Thursday, September 2, 2010 at 2 p.m.:

Consideration of Amicus Participation

Commissioner Walter, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

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: August 27, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–21857 Filed 8–27–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62762; File No. SR–FINRA–2009–042]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Outside Business Activities of Registered Persons

August 23, 2010.

On June 8, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change relating to the outside business activities of registered persons. FINRA proposed to adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the consolidated FINRA rulebook with moderate changes. The proposed rule change would delete Incorporated NYSE Rule 346 (Limitations—Employment and Association with Members and Member Organizations) and its interpretations.

The proposed rule change was published for comment in the **Federal Register** on July 8, 2009.[1] The Commission received six comments on the proposed rule change.[2] On July 30, 2010, FINRA responded to the comments.[3] Also on July 30, 2010, FINRA filed Amendment No. 1 to the proposed rule change.

[1] *See* Securities Exchange Act Release No. 60199 (June 30, 2009), 74 FR 32668 (July 8, 2009).

[2] *See* letter from Dale E. Brown, CAE, Financial Services Institute, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 ("FSI letter"); letter from Joan Hinchman, National Society of Compliance Professionals, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 ("NSCP letter"); letter from Clifford E. Kirsch and Susan Krawczyk, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 ("Sutherland letter"); letter from Gary A. Sanders, National Association of Insurance and Financial Advisors, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 ("NAIFA letter"); letter from James Livingston, National Planning Holdings, Inc., to Elizabeth M. Murphy Secretary, Commission, dated July 28, 2009 ("NPH letter"); and letter from Stephanie L. Brown, LPL Financial Corporation, to Elizabeth M. Murphy, Secretary, Commission, dated August 6, 2009 ("LPL letter").

[3] *See* letter from Gary L. Goldsholle, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated July 30, 2010 ("FINRA Response").

II. Description of Proposed Rule Change

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA proposed to adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the Consolidated FINRA Rulebook with moderate changes. The proposed rule change would delete NYSE Rule 346[5] (Limitations—Employment and Association with Members and Member Organizations) and its interpretations. However, as further described below, the proposed rule change would incorporate certain provisions of NYSE Rule 346 into new FINRA Rule 3270.

Proposed FINRA Rule 3270 (Outside Business Activities of Registered Persons)

Proposed FINRA Rule 3270 would prohibit any registered person from being an employee, independent contractor, sole proprietor, officer, director or partner of another person, or being compensated, or having the reasonable expectation of compensation, from another person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member. The proposed rule change would expand the obligations imposed under NASD Rule 3030, which prohibits any registered person from being employed by or accepting any compensation from any person as a result of any outside business activity, other than passive investment, unless he has provided prompt written notice to his member firm. In contrast, NYSE Rule 346(b) generally prohibits any member (as defined in the NYSE rules) or employee of a member organization from being engaged in any other business, or being employed or compensated by any other person, or serving as an officer, director, partner or employee of another business organization or owning any stock or having any direct or indirect financial interest in any other organization engaged in any securities, financial or kindred business unless such person has made a written request to, and received prior written consent from, his or her member organization employer.

The primary difference between the existing NASD and NYSE rules is the timing of the required notice and the requirement in the NYSE rule for a member's prior written consent. With respect to timing, FINRA believes that registered persons should not be permitted to engage in outside business activities without the firm's prior knowledge. Potential investor harm could ensue in the interim period between the time the registered person commences an outside business activity and the time a firm receives "prompt" written notice. Also, because the term "prompt" is susceptible to differing interpretations, adopting a prior written notice standard in this context would promote consistency within the securities industry, though FINRA understands that, in practice, many firms already require prior written notice. Further, a prior written notice standard would allow a firm an opportunity to determine whether the proposed outside business activity is properly being characterized by the registered representative as an outside business activity, or whether it is an outside *securities* activity, subject to NASD Rule 3040 (Private Securities Transactions of an Associated Person).[6]

For these reasons, FINRA proposed that FINRA Rule 3270 require prior written notice whenever a registered representative will be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or will be compensated, or have the reasonable expectation of compensation, from any other person as a result of any outside business activity.

With respect to the requirement in NYSE Rule 346(b) for prior written consent, FINRA believes that requiring prior written consent for outside business activities is unnecessary. To the extent that these activities may nevertheless raise investor protection concerns and adversely impact the individual's business within the firm, the proposed rule change has supplementary material, drawn in part from procedures required in NYSE Rule

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The new FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

[6] FINRA is proposing to replace NASD Rule 3040 with new provisions in proposed FINRA Rule 3110(b)(3), as part of the consolidated FINRA rules addressing supervision and supervisory controls. *See* Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 2090 (Know Your Customer) and 2111 (Suitability) in the Consolidated FINRA Rulebook, Securities Exchange Act Release No. 62718 (August 13, 2010), 75 FR 51310 (August 19, 2010).

346(e), that sets forth the obligations of a member upon receipt of a written notice of a proposed outside business activity. Under the proposal as amended, the supplementary material states that, upon receiving written notice under Rule 3270, a member must consider whether the proposed activity will: (1) Interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers or (2) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Based upon this review, the member must evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity, including where circumstances warrant, prohibiting the activity. A member also must evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity subject to the requirements of NASD Rule 3040. A member must also keep a record of its compliance with these obligations with respect to each written notice received and must preserve this record for the period of time and accessibility specified in Rule 17a-4(e)(1) under the Securities Exchange Act of 1934.

The proposed rule change also harmonizes and simplifies the standards for what constitutes an outside business activity. Currently, the NASD and NYSE rules have a number of overlapping provisions. NYSE Rule 346(b) generally requires, subject to certain exceptions, written notice whenever a member or employee of a member organization is employed or compensated by any other person; serves as an officer, director, partner or employee of another organization; or owns any stock or has, directly or indirectly, any financial interest in any other organization engaged in any securities, financial or kindred business. NASD Rule 3030 generally requires notice whenever a registered person is employed by or accepts any compensation from any person as a result of any outside business activity, other than passive investment. In reconciling these two standards, the proposed rule change requires prior written notice whenever a registered representative will be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or will be compensated, or have the reasonable expectation of compensation, from any other person as a result of any outside business activity. The inclusion of the phrase "or have the reasonable expectation of compensation" addresses situations in which an outside activity does not immediately yield compensation (e.g., where a registered person intends to work for a start-up business). FINRA believes that a registered person should not be able to engage in an activity in which he or she reasonably expects to be compensated without providing the firm with prior written notice, and FINRA believes that a rule dependent on the prior receipt of compensation is too narrow and may be susceptible to abuse. Proposed Rule 3270 retains the exemptions in NASD Rule 3030 for "passive investments" and activities subject to the requirements of NASD Rule 3040.[7]

In addition, the proposed rule would streamline the text by replacing the phrase "person associated with a member in any registered capacity" with "registered person" and would re-title the rule "Outside Business Activities of Registered Persons" to better reflect its application to registered persons.

Deleted Provisions of Incorporated NYSE Rule 346 and Its Supplementary Material and Interpretations

FINRA proposes to delete other provisions of NYSE Rule 346 that are unnecessary and/or duplicative of provisions in the federal securities laws or the FINRA Rulebook and delete NYSE Rule Interpretations that are unnecessary or inconsistent with Proposed Rule 3270.

NYSE Rule 346(a) and related NYSE Interpretation 346/01 require natural persons not associated with entities that are registered broker-dealers to register with the Commission unless specifically exempted by the Exchange Act. FINRA has proposed to delete these provisions as redundant in light of Section 15(a) of the Exchange Act.[8]

NYSE Rule 346(c) provides that where a member organization approves an employee's participation in a private securities transaction in which regard the employee has or may receive selling compensation, the transaction shall be recorded on the books and records of the member organization, which shall supervise such participation as if the transaction were executed on its behalf. FINRA has proposed to delete this provision as redundant of NASD Rule 3040 (Private Securities Transactions of an Associated Person).[9]

NYSE Rule 346(d) provides that no member shall qualify more than one member organization for membership. This provision is inconsistent with FINRA's approach to membership, which allows the same individual to qualify more than one firm for membership, as appropriate. FINRA examines separately the merits of each membership application and has proposed to delete the prohibition in the NYSE rule.

NYSE Rule 346(e) requires every employee of a member organization who is assigned or delegated any responsibility or authority pursuant to NYSE Rule 342 to devote his entire time during business hours to the business of such member organization unless an alternative arrangement has been approved in writing by the member organization. FINRA believes that the existing and proposed rules on supervision and outside business activities adequately ensure that the member firm's business is not adversely affected by outside activities. Moreover, associated persons in the independent broker-dealer channel at times devote substantial time to non-member business and this provision would create unnecessary administrative burdens if applied to them. Accordingly, FINRA has proposed to delete this provision.

NYSE 346(f) provides that unless otherwise permitted by the Exchange, no member, member organization, approved person, employee or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any "statutory disqualification" defined in Section 3(a)(39) of the Exchange Act.[10] In connection with FINRA's consolidation transaction, FINRA amended its definition of disqualification in its By-Laws to align with the Exchange Act definition, thereby incorporating additional categories of statutory disqualification, including certain affiliated relationships.[11] Accordingly, FINRA has proposed to delete NYSE Rule 346(f) as redundant.

Finally, FINRA has proposed to delete NYSE Rule Interpretations 346/02 and /03, which address personal business

[7] FINRA is separately considering NASD Rule 3050 (Transactions for or by Associated Persons) as part of the rulebook consolidation process and will consider whether transactions subject to NASD Rule 3050, as proposed to be amended, also should be exempted from proposed FINRA Rule 3270.

[8] 15 U.S.C. 78*o*–3.

[9] *See supra* note 6.

[10] 15 U.S.C. 78c(a)(39).

[11] For further discussion, *see* Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (Order Approving SR–FINRA–2008–045).

expenses and factors to consider when approving outside activities, FINRA believes the Interpretations are unnecessary or inconsistent with proposed FINRA Rule 3270. In particular, the provisions in NYSE Rule Interpretation 346/02 requiring a firm to assume responsibility for all activities effected on its behalf and under its name are addressed by other FINRA rules, including supervision rules. In addition, FINRA has chosen not to impose a requirement for firms to approve all advertisements of an outside business, although a firm may impose such restrictions as part of its obligations under supplementary material .01. FINRA requires firms to approve all advertisements for member firm business, even if an advertisement relates to the firm's non-securities business; however, FINRA does not believe that approval should be required for outside business activities permitted under the proposed rule change.

For the reasons noted above, FINRA has proposed to transfer NASD Rule 3030 into the Consolidated FINRA Rulebook with the changes described herein. In addition, FINRA has proposed to delete NYSE Rule 346 and its interpretations from the Transitional Rulebook also as described herein.

III. Summary of Comments and Amendment No. 1

Prior Member Consent to Outside Business Activities of Registered Persons

Certain commenters suggested that FINRA amend proposed FINRA Rule 3270 to require a member's consent before a registered person may engage in any outside business activity. One commenter noted that in practice most registered persons are required to get written acknowledgement from their firm prior to engaging in outside business activities, and believes that requiring member consent ensures that the registered person does not engage in an outside business activity before the member completes its due diligence as required under the proposed Supplementary Material in proposed FINRA Rule 3270.[12] According to two commenters, allowing a registered person to engage in outside business activities upon notice of the proposed activity without a requirement that the firm consent to such activity places the firm in a position of risk during the interim period since the firm may not have had ample time to review the matter.[13] Certain commenters believed the proposed rule should require an affirmative written response from the member[14] or a written response noting any objections or concerns to the proposed activity.[15] One commenter supported the proposal not to incorporate a member consent requirement but notes that the requirements of proposed Supplementary Material .01 are the functional equivalent of requiring prior consent from the member.[16]

FINRA responded that it does not plan to amend the proposal to incorporate a prior member consent requirement for a registered person's outside business activities as such a requirement is not necessary for all types of firms. FINRA noted that the proposal does not preclude any member from including a prior member consent requirement as part of its procedures to manage the outside business activities of its registered persons.

"Compensation" and "Reasonable Expectation of Compensation"

One commenter believed that the "reasonable expectation of compensation" standard in proposed FINRA Rule 3270 is too vague, particularly if this initial determination is made by the registered person, and expressed concern that FINRA will question the initial determinations made by registered persons and/or their supervisors.[17] Another commenter requested that FINRA define the term "compensation."[18] FINRA, in its response, stated that it believes that the standards in the proposed rule are appropriate and workable; that members will demand sufficient information to enable them to make the necessary determinations; and that the reasonableness of a determination will not be judged in hindsight, but rather based on the information requested and obtained at the time of the registered person's prior written notice. Also in its response, FINRA stated that it does not intend to amend the proposal to adopt a definition for the term "compensation" in the proposed rule. FINRA notes that neither NASD Rule 3030 nor NYSE Rule 346, upon which the proposed rule change is based, includes a definition of the term "compensation," and FINRA believes that incorporating a definition of this term in the proposed rule may frustrate the intent and application of the rule as it may encourage registered persons to structure outside business arrangements to purposefully evade the requirements of the proposed rule.

Also, a commenter suggested changing language in the general requirement of proposed FINRA Rule 3270.[19] The proposed rule provides that "[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation from any other person as a result of any business activity outside the scope of the relationship with his or her member." The commenter requested that the phrase "as a result of any business activity" be replaced with "in conjunction with an established business enterprise." The commenter advocated a revised approach noting that an individual is an employee, officer or director in a business entity or not, so it does not make sense to connect these relationships to the phrase "as a result of any business activity." In its response, FINRA notes that the reference to "as a result of any business activity" is from NASD Rule 3030 and has not been changed under the proposal. FINRA states that the phrase the compensation language directly preceding it and, accordingly, the proposed rule prohibits a registered person from either acting in one of the enumerated roles or from being compensated by, or having the reasonable expectation of compensation from, any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior notice to the member. FINRA does not intend to amend the proposal to incorporate the suggested language.

Reporting Material Changes to Outside Business Activities

A few commenters requested that the proposed rule impose an ongoing obligation on registered persons to provide prior written notice to a member should an outside business activity undergo a material change.[20] Two commenters noted that without such a requirement, a member has no way to make knowledgeable decisions regarding these activities subjecting the firm to regulatory risk and harm.[21] One

[12] NPH letter.

[13] FSI letter, LPL letter.

[14] FSI letter, LPL letter.

[15] NAIFA letter.

[16] NAIFA letter.

[17] Sutherland letter. This commenter requested guidance on facts and circumstances that would be relevant in making this initial determination. Also, the commenter recommended that FINRA clarify that the initial determination should be made by the member, based on information provided by the registered person, and that it would not be triggered absent a concrete understanding or agreement between the registered person and its outside business that compensation will or will likely be paid over time.

[18] FSI letter.

[19] FSI letter.

[20] FSI letter, LPL letter, NPH letter.

[21] FSI letter, LPL letter.

commenter requested clarification on a member's liability in the event an outside business activity changes over time.[22] In its response, FINRA states that it believes that the requirement for a registered person to amend or supplement the nature of the prior written notice is implicit in the proposed rule change. FINRA explains that a registered person's prior written notice is valid only to the extent that it continues to accurately describe the outside business activity and, thus, it is incumbent on the registered person to provide prior written notice before altering the nature of any outside business activity previously disclosed in writing to the firm. FINRA also notes that a member's supervisory system should demand that each registered person notify the member in the event of a material change to his or her outside business activities.

Supplementary Material .01 (Obligations of Member Receiving Notice)

All of the comment letters received by the Commission addressed proposed Supplementary Material .01. The Supplementary Material initially had provided that firms must review the registered person's participation in the outside activity to determine whether it raises investor protection concerns. As initially proposed, the Supplementary Material would have required that a member must make a determination as to whether the proposed activity raises investor protection concerns, and if so, the firm must implement procedures or restrictions on the activity to protect investors, or prohibit the activity. Certain commenters opposed the proposed Supplementary Material, in whole or in part, and request that it be removed from the proposal.[23]

Generally, the commenters believed that the proposal exceeds FINRA's jurisdiction by imposing on members a supervisory obligation for the outside business activities of its registered persons.[24] The commenters stated that members do not have the resources to supervise the wide variety of outside business activities in which their registered persons engage. One commenter further provided that this limited knowledge or expertise would impede the determination of whether an outside business activity raises investor protection concerns.[25] Certain other commenters believed that the proposed Supplementary Material would distract members from core supervisory functions by requiring supervision of activities beyond their purview or practical control.[26]

Certain commenters suggested that FINRA clarify the due diligence required in making a determination whether a proposed outside business activity raises "investor protection concerns"[27] and, further, how FINRA would define the terms "investor," "protect investors" and "investor protection concerns" for purposes of the proposed rule.[28] One commenter noted that the term "investor protection concerns" could be subject to interpretation and applied differently across member firms.[29] Another commenter stated that almost any activity could raise investor protection concerns and suggests that, unless this term is defined as it relates to non-securities activities, FINRA should remove it from the proposal.[30] One commenter believed the Supplementary Material, as initially proposed, was overly broad because many outside business activities have nothing to do with traditional investors or investor protection issues.[31]

In response to the comments received by the Commission, FINRA is amending proposed Supplementary Material .01. Under the Supplementary Material, as amended, FINRA will expect members to assess the impact of the outside activity on the member's business and the member's customers, as well as the extent to which customers or the public would perceive the outside activity to be part of the member's business. Specifically, the revised proposal provides that, upon receipt of a written notice under proposed FINRA Rule 3270, a member shall consider whether the proposed activity will: (1) Interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers or (2) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Additionally, based on the member's review of such factors, the member would be required to evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity, including where circumstances warrant, prohibiting the activity.

IV. Discussion and Finding

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[32] The Commission believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[33] The proposed rule change will clarify and streamline NASD Rule 3030 for adoption as a FINRA rule in the new Consolidated FINRA Rulebook, while also implementing additional protections such as the need for registered persons to provide prior written notice to its member firms of proposed outside business activities and for firms to implement a system to assess the risk that these outside business activities may cause potential harm to investors and to manage these risks by taking appropriate actions as prescribed by the proposed rule.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[34] for approving the proposed rule change, as amended by Amendment No. 1 thereto, prior to the 30th day after the date of publication in the **Federal Register**. The changes proposed in Amendment No. 1 do not raise novel regulatory concerns. Moreover, accelerating approval of this proposal should benefit FINRA member firms and investors by streamlining and clarifying a member's obligations upon receipt of notice of a proposed outside business activity by a registered person.

VI. 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:

[22] NSCP letter.

[23] FSI letter, LPL letter, NAIFA letter, Sutherland letter.

[24] FSI letter, LPL letter, NAIFA letter, NPH letter, NSCP letter, Sutherland letter.

[25] NPH letter.

[26] FSI letter, NAIFA letter.

[27] LPL letter, NPH letter, NSCP letter.

[28] FSI letter, NSCP letter, Sutherland letter.

[29] LPL letter.

[30] NSCP letter.

[31] Sutherland letter.

[32] In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[33] *See* 15 U.S.C. 78*o*–3(b)(6).

[34] 15 U.S.C. 78s(b)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–042 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–FINRA–2009–042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–042 and should be submitted on or before September 21, 2010.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–FINRA–2009–042), as amended, be, and hereby is, approved on an accelerated basis.

[35] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–21606 Filed 8–30–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62763; File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–FINRA–2010–033; SR–ISE–2010–66; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; SR–NASDAQ–2010–079; SR–NSX–2010–08]

Self-Regulatory Organizations; BATS Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Changes Relating to Trading Pauses Due to Extraordinary Market Volatility

August 24, 2010.

On June 30, 2010, each of BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder,[3] proposed rule changes to amend certain of their respective rules to add securities to the single-stock circuit breaker pilot program.[4]

Section 19(b)(2) of the Act [5] provides that, within thirty-five days of the publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall either approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission extended this time period from August 11, 2010 to August 25, 2010.[6] The Commission is again extending this time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule changes so that it has sufficient time to consider these proposed rule changes, which relate to the addition of securities to the single-stock circuit breaker pilot program, and issues raised in the comment letters that have been submitted in connection with these filings.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates September 10, 2010, as the date by which the Commission should either approve or institute proceedings to determine whether to disapprove the proposed rule changes.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–21630 Filed 8–30–10; 8:45 am]

BILLING CODE 8010–01–P

[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The single-stock circuit breaker pilot program was initially approved on June 10, 2010. *See* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010); 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010).

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 62688A (August 11, 2010), 75 FR 51138 (August 18, 2010).

[7] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62766; File No. SR–Phlx–2010–117]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees, the Monthly Cap and Electronic Auctions

August 25, 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 August 23, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and III 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 its fees as follows: (i) Amend the pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index option customer and professional orders to away markets for execution; (ii) amend the Monthly Cap on equity option transaction fees; and (iii) clarify language relating to electronic auctions in the Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after September 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing Customer[4] and Professional[5] orders in equity and index options to away markets, specifically the NASDAQ Options Market ("NOM").

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[6] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes Routing Fees for both Customer and Professional orders. The Exchange currently assesses a Routing Fee of $.46 per contract in all Customer and Professional option orders that are routed to NOM.

The Exchange proposes to amend the current fee of $.46 per contract that is assessed for routing Customer and Professional orders to NOM in all options to $.49 per contract. The Exchange is proposing this amendment in order to recoup clearing and transaction charges which are incurred by the Exchange when orders are routed to NOM. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange proposes this fee change to account for an increase in cost for routing to NOM.[7]

The Exchange also proposes to amend its Monthly Cap assessed on Registered Options Traders ("ROTs")[8] and Specialists[9] for equity options transactions. The Exchange currently provides ROTs and Specialists a Monthly Cap of $650,000. The Exchange is proposing to reduce that Monthly Cap to $600,000.[10] The Exchange believes that by reducing the Monthly Cap, a greater number of members may benefit from the Monthly Cap and the Exchange will attract additional order flow.

Finally, the Exchange proposes to clarify certain language in the Rebates and Fees for Adding and Removing Liquidity in Select Symbols, which was added in a previous rule change that [sic] relating to electronic auctions.[11] The Exchange previously filed a rule change concerning the applicability of fees in electronic auctions.[12] These fees are contained in Section I of the Fee Schedule and titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols. In that rule change, the Exchange specified that a Specialist and an ROT, including an SQT and RSQT, would not receive a rebate for adding liquidity in an electronic auction. In that filing the Exchange noted that it is unable to calculate the rebates for Specialists and ROTs, including SQTs and RSQTs, in an electronic auction. The Exchange proposes to further clarify that Customers, Professionals and Directed Participants[13] would also not receive a rebate for adding liquidity in an electronic auction.

The Exchange inadvertently did not include Customers, Professionals and Directed Participants in that earlier amendment. As with the other market participants, the Exchange is currently unable to determine when a Customer, Professional or Directed Participant is adding liquidity in electronic auctions for purposes of applying the rebates. The Exchange proposes to clarify the language in the Fee Schedule to add Customers, Professionals and Directed Participants to the existing language. The Exchange's proposal would add language to the Fee Schedule to state that with respect to electronic auctions, Customers, Professionals and Directed Participants would not receive a rebate, which language is consistent with the Exchange's current practice.

While changes to the Exchange's Fee Schedule pursuant to this proposal are

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

[4] The term Customer applies to a transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a "Professional" as that term is defined in Rule 1000(b)(14).

[5] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional"). *See* 1000(b)14.

[6] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[7] *See* SR–NASDAQ–2010–105.

[8] A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. *See* Exchange Rule 1014 (b)(i) and (ii).

[9] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[10] In calculating the Monthly Cap, the trading activity of separate ROTs and Specialist member organizations are aggregated if there is at least 75% common ownership between the member organizations.

[11] Electronic auctions include, without limitation, the Complex Order Live Auction ("COLA"), and Quote and Market Exhaust auctions.

[12] Electronic auctions include, without limitation, the Complex Order Live Auction ("COLA"), and Quote and Market Exhaust auctions.

[13] *See* Exchange Rule 1080(l), "* * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after September 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(4) of the Act [15] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the increase to the NOM Routing Fee is both equitable and reasonable because the Exchange is seeking to recoup the costs incurred by the Exchange to route Customer and Professional orders to NOM on behalf of its members.

The Exchange believes that it is both equitable and reasonable to lower the Monthly Cap. By lowering the Monthly Cap, the Exchange believes a greater number of ROTs and Specialists will benefit from such a Monthly Cap.

Finally, the Exchange believes that clarifying the applicability of the rebates for adding liquidity in an electronic auction is equitable and reasonable because it clearly states when the rebate is applicable to certain transactions. Currently, Customers, Professionals and Directed Participants do not receive rebates for adding liquidity in an electronic auction.

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 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 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.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–117 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–Phlx–2010–117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–117 and should be submitted on or before September 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–21631 Filed 8–30–10; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62767; File No. SR–FICC–2010–04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Provide Clarity With Respect to the Close Out Netting of the Government Securities Division in the Event of the Fixed Income Clearing Corporation's Default or Insolvency

August 26, 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 August 12, 2010, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by FICC. 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 purpose of the proposed rule change is to provide clarity with respect to the close out netting of the Government Securities Division ("GSD") in the event of FICC's default or insolvency.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC is proposing to add a provision to the rules of GSD to make explicit the close out netting that would be applied to obligations between FICC and its members in the event that FICC becomes insolvent or defaults in its obligations to its members.[4]

FICC has been approached by some of its dealer members that have requested that FICC add a provision to the rules of GSD to make explicit the close out netting of obligations between FICC and its members in the event that FICC becomes insolvent or defaults in its obligations to its members. Such members have stated that the proposed rule change will provide clarity in their application of balance sheet netting to their positions with FICC under U.S. GAAP in accordance with the criteria specified in the Financial Accounting Standards Board's Interpretation No. 39, *Offsetting of Amounts Related to Certain Contracts* (FIN 39). The members have stated further that the proposed rule change would allow them to comply with Basel Accord Standards relating to netting. Specifically, firms are able to calculate their capital requirements on the basis of their net credit exposure where they have legally enforceable netting arrangements with their counterparties, which includes a close out netting provision in the event of the default of a counterparty (in this case, the division of FICC acting as a CCP).

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to FICC because the proposed rule change would provide FICC members with clarity in the calculation of their capital requirements with respect to their net credit exposure where members have legally enforceable netting arrangements with their counterparties. Moreover, other clearing agencies have similar provisions in their rules for the same purpose.[6]

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve or disapprove the proposed rule change or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FICC–2010–04 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–FICC–2010–04. 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 Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 am and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/ficc/2010-04.pdf.* 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–FICC–2010–04 and should be submitted on or before September 21, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–21678 Filed 8–30–10; 8:45 am]

BILLING CODE 8010–01–P

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] The specific language of the proposed provision can be found at *http://www.dtcc.com/downloads/legal/rule_filings/2010/ficc/2010-04.pdf.*

[5] 15 U.S.C. 78q–1.

[6] The Commission has previously approved a similar provision for another clearing agency for the same purpose of providing such clearing agency's members with the needed clarity. Securities Exchange Act Release No. 34–56069 (July 13, 2007), 72 FR 39869 (July 20, 2007).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment

period was published on May 6, 2010 (75 FR 25033–25034).

DATES: Comments must be submitted on or before September 30, 2010.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Maria Vegega, PhD Chief, Behavioral Research Division, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., W44–302, Washington, DC 20590. Dr. Vegega's phone number is 202–366–2668 and her e-mail address is *Maria.Vegega@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Focus Group Review of Advanced Alcohol Detection Technology.

Type of Request: New information collection requirement.

Abstract: In 2008, 11,773 people were killed in alcohol-impaired-driving crashes. Drivers are considered to be alcohol-impaired when their blood alcohol concentration (BAC) is .08 grams per deciliter (g/dL) or higher. These alcohol-impaired-driving fatalities accounted for 32 percent of the total motor vehicle traffic fatalities in the United States.

In a continuing effort to reduce the adverse consequences of alcohol-impaired driving, NHTSA in conjunction with the Automotive Coalition for Traffic Safety (ACTS) is undertaking research and development to explore the feasibility of, and public policy challenges associated with, use of in-vehicle alcohol detection technology. The agency believes that use of vehicle-based, alcohol detection technologies could help to significantly reduce the number of alcohol-impaired driving crashes, deaths and injuries by preventing drivers from driving while their blood alcohol concentration (BAC) is at or above the legal limit. In 2008, ACTS and NHTSA entered into a 5–Year Cooperative Agreement to "*explore the feasibility, the potential benefits of, and the public policy challenges associated with a more widespread use of unobtrusive technology to prevent drunk driving*". The goal of this research effort, the Driver Alcohol Detection System for Safety (DADSS) project, is to develop and test prototypes that may be considered for vehicle integration thereafter.

As technology development progresses and decisions are being made about how to integrate such technology into vehicles, NHTSA needs a better understanding of public preferences with respect to in-vehicle alcohol detection devices. Optimization of technology and public acceptance of it once deployed will depend on the extent to which public attitudes are taken into account during the development process. Recognizing the need to obtain input from drivers early in the development process, NHTSA proposes to conduct a total of 24 focus groups in two stages. The first set of focus groups (12 focus groups) will obtain information from licensed drivers on public perceptions and attitudes concerning in-vehicle alcohol detection technology designed to prevent alcohol-impaired driving. Information from this phase of the project will be used by NHTSA and the DADSS research team to provide input to decision making regarding vehicle integration with respect to the technology under investigation. A second set of focus groups (12 focus groups) will gauge driver reaction to technology prototypes, obtain input on alternative prototype features, and obtain guidance on strategies for introduction of the technology into the vehicle fleet. The information will also be used to identify potential barriers to acceptance of the technologies.

Affected Public: Drivers age 21 years and older will be recruited in four locations to participate in focus groups. They will be provided with a stipend to reimburse them for expenses and compensate them for their time in participating in the discussions. Participation by all respondents would be voluntary and anonymous. All focus groups will be conducted by a trained moderator.

Estimated Total Annual Burden: 288 hours (24 focus groups with eight participants in each, averaging 1.5 hours).

Comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed information collection;

(iii) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2010–21757 Filed 8–30–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35379]

RailAmerica, Inc., Palm Beach Holding, Inc., RailAmerica Transportation Corp., Central Railroad Company of Indianapolis, Chicago Ft. Wayne and Eastern Railroad Division, Fortress Investment Group, LLC, and RR Acquisition Holding, LLC—Control Exemption—Delphos Terminal Company, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Board grants an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25, for RailAmerica, Inc. (RailAmerica); Palm Beach Holding, Inc. (Palm Beach); RailAmerica Transportation Corp. (RTC); Central Railroad Company of Indianapolis (CERA); Chicago Ft. Wayne and Eastern Railroad Division (CFE); Fortress Investment Group, LLC (Fortress), on behalf of certain private equity funds managed by Fortress and its affiliates; and RR Acquisition Holding, LLC (RR Acquisition), to acquire control of Delphos Terminal Company, Inc. (DTC), subject to labor protective conditions. Pursuant to an agreement that CERA, a Class III rail carrier, intends to enter into with Bunge North America (East), LLC (Bunge), the parent company of DTC, CERA will acquire from Bunge all of the issued and outstanding shares of stock of DTC and will thus acquire direct control of DTC. Fortress, RR Acquisition, RailAmerica, Palm Beach, and RTC will indirectly control DTC, because Fortress's noncarrier affiliate, RR Acquisition, controls noncarrier RailAmerica; RailAmerica directly controls noncarrier Palm Beach; Palm Beach directly controls noncarrier RTC; and RTC directly controls CERA. RailAmerica is a holding company that directly or indirectly controls 1 Class II and 29 Class III railroads. Fortress is a noncarrier that indirectly controls 1 Class II rail carrier.[1]

[1] The Board exempted the transfer of indirect control of that Class II carrier, Florida East Coast Railway, LLC (FEC), from Fortress to RailAmerica, with Fortress retaining indirect control of

DATES: This exemption will be effective on September 25, 2010. Petitions to stay must be filed by September 3, 2010. Petitions to reopen must be filed by September 15, 2010.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to Docket No. FD 35379, to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, send one copy of pleadings to Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

FOR FURTHER INFORMATION CONTACT: Eric Davis, (202) 245–0393 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 25, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–21626 Filed 8–30–10; 8:45 am]

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RailAmerica, in *Fortress Inv. Group, LLC et al.—Exemption for Transaction within a Corporate Family,* Docket No. FD 35123 (STB served Mar. 19, 2008). According to petitioners, to date, RailAmerica has not yet exercised the control of FEC.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Santa Rosa County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Santa Rosa County, Florida.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Kendall, AICP, Environmental Specialist, Federal Highway Administration, 545 John Knox Road, Suite 200, Tallahassee, Florida 32303, *Telephone:* (850) 942–9650.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to improve SR 87 in Santa Rosa County, Florida. The proposed improvement would involve the construction of a new roadway connecting SR 87S to SR 87N. The new roadway would vary between five to eleven miles in length. The improvement is considered necessary to provide connectivity for the existing and projected traffic demand, and to provide a more direct corridor for emergency evacuations from the Gulf Coast.

Alternatives under consideration include (1) taking no action; (2) alternative corridors that would provide for a four-lane rural highway with plans to build two-lanes initially to be widened to a four-lane divided rural facility as needed in the future.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held between February, 2010 and June, 2013. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment. An informal scoping meeting was held at the project site on July 29th, 2010. There are no plans to hold a formal scoping meeting. Scoping will be accomplished by use of the Florida Efficient Transportation Decision Making Process and a series of meetings for agencies and the public.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program.)

Issued on: August 25, 2010.

Martin Knopp,

Division Administrator, FHWA, Federal Administrator, Tallahassee, Florida.

[FR Doc. 2010–21740 Filed 8–30–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0226]

Liquefied Natural Gas Facilities: Obtaining Approval of Alternative Vapor-Gas Dispersion Models

AGENCY: Pipeline and Hazardous Materials Safety Administration, (PHMSA) DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: This advisory bulletin provides guidance on the requirements for obtaining approval of alternative vapor-gas dispersion models under Subpart B of 49 CFR part 193.

FOR FURTHER INFORMATION CONTACT: Charles Helm at 405–954–7219 or *charles.helm@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) issues federal safety standards for siting liquefied natural gas (LNG) facilities. Those standards require that an operator or governmental authority control the activities around an LNG facility to protect the public from the adverse effects of thermal radiation and flammable vapor-gas dispersion. Certain mathematical models and other parameters must be used to calculate the dimensions of these so-called "exclusion zones."

In the case of vapor-gas dispersion, two different models may be used where appropriate: (1) The DEGADIS Dense Gas Dispersion Model (DEGADIS), an integral model that simulates the downwind dispersion of dense gases in the atmosphere, and (2) FEM3A, a dispersion model that accounts for additional cloud dilution which may be caused by the complex flow patterns induced by tank and dike structures.

The use of alternative vapor-gas dispersion models is also permitted, if those models take into account the same physical factors as the approved models, are validated by experimental test data, and receive the Administrator's approval. Conservatism, field testing, post-testing data evaluation, and correlative analysis are critical to satisfying these conditions.

In addition, PHMSA's federal safety standards incorporate by reference the National Fire Protection Association (NFPA) NFPA 59A: Standard for the Production, Storage, and Handling of Liquefied Natural Gas. That consensus

industry standard is issued by the Technical Committee on Liquefied Natural Gas of the NFPA.

Several years ago, the NFPA 59A Technical Committee tasked the Fire Protection Research Foundation (FPRF), a nonprofit entity that performs research for the NFPA, with developing a tool for evaluating the suitability of LNG vapor-gas dispersion models. The FPRF subsequently contracted with the Health & Safety Laboratory; the research agency of the United Kingdom Health & Safety Executive, to examine the modeling of dispersion of LNG spills on land and develop guidelines to assess those models.

An expert panel, including representatives from Sandia National Laboratories, PHMSA, the Federal Energy Regulatory Commission (FERC), NFPA, the United States Coast Guard, and other stakeholders, assembled to provide guidance and comment on the development of those guidelines. That effort led to the creation of the Model Evaluation Protocol (MEP) as described in *M.J. Iving et al., Evaluating Vapor Dispersion Models for Safety Analysis of LNG Facilities Research Project: Technical Report* (Apr. 2007) (available at *http://www.nfpa.org*) (Original FPRF Report), and supplemented in S. Coldrick *et al., Validation Database for Evaluating Vapor Dispersion Models for Safety Analysis of LNG Facilities: Guide to the LNG Model Validation Database, Version 11.0* (May 2010) (available at *http://www.nfpa.org*) (Supplemental FPRF Report):

> The MEP is based on three distinct phases: scientific assessment, model verification and model validation. The scientific assessment is carried out by obtaining detailed information on a model from its current developer using a specifically designed questionnaire and with the aid of other papers, reports and user guides. The scientific assessment examines the various aspects of a model including its physical, mathematical and numerical basis, as well as user oriented aspects. * * * The outcome of this scientific assessment is recorded in a MER, along with the outcomes of the verification and validation stages * * *.
>
> [In] [t]he verification stage of the protocol[,] * * * evidence * * * is sought from the model developer and this is then assessed and reported in the MER. The validation stage of the MEP involves applying the model against a database of experimental test cases including both wind tunnel experiments and large-scale field trials. The aim of the validation stage is * * * to quantify the performance of a model by comparison of its predictions with measurements.

Funded by a grant from PHMSA, the National Association of State Fire Marshals (NASFM) then convened a panel of its own experts, and that panel performed an independent review of the MEP and produced a separate technical report, National Association of State Fire Marshals, *Review of the LNG Vapor Dispersion Model Evaluation Protocol* (Jan. 2009) (NASFM MEP Report); *see also* National Association of State Fire Marshals, *Review of the LNG Source Term Models for Hazard Analysis: A Review of the State-of-the-Art and an Approach to Model Assessment* (Jun. 2009) (NASFM Source Term Report).

After carefully considering the information provided in the Original FRPF Report, Supplemental FPRF Report, and NASFM MEP Report, PHMSA is issuing further guidance on the standard for obtaining approval of alternative vapor-gas dispersion models, particularly the requirement for validation by experimental test data. That guidance is based on the MEP's three-stage process for evaluating such models, but includes modifications to address the concerns of other stakeholders, including NASFM and FERC.

II. Advisory Bulletin (ADB–10–07)

To: Owners and Operators of LNG Facilities.

Subject: Liquefied Natural Gas Facilities: Obtaining Approval of Alternative Vapor-Gas Dispersion Models.

Advisory: In seeking the Administrator's approval of an alternative vapor-gas dispersion model, a petitioner may demonstrate that its model has been validated by experimental test data by using the three-stage process described in the MEP. A petitioner may also submit a MER as evidence of its completion of the MEP.

The model developer or an independent body may complete the MER, which should contain certain information about the proposed model, including general information (*Section 1*), information for scientific assessment (*Section 2*), information for user-oriented assessment (*Section 3*), information on verification (*Section 4*), information on validation (*Section 5*), and other administrative details (*Section 6*). The validation portion of the MER should include the validation database described in the Original FPRF Report and Supplemental FPRF Report, with appropriate consideration of the additional guidance provided below.

This guidance relates to some of the concerns raised in the NASFM MEP Report and by other interested parties, including FERC, and is organized to correspond with the affected sections of the MER. These suggested practices may require modification in individual cases, and the proponent of an alternative model may establish its suitability by any other appropriate means, subject to the Administrator's approval.

1. *Section 2.1.1.2 Source Geometry Handled by the Dispersion Model* should describe and clearly state the limitations of the model related to its ability to handle different source terms, including:

a. Ability to handle the dispersion of vapors from a transient *(i.e.,* flowing) and irregular liquid pool geometries, including vaporization from geometries with high aspect ratios (*i.e.,* long trenches) in the cross-wind and parallel-wind direction.

b. Ability to handle the dispersion of vapors from a vaporizing regular liquid pool geometry (circular, squared) source term.

c. Ability to handle the simultaneous dispersion of vapors from a combination (*i.e.,* multiple sources) of the phenomena above.

d. Use of any sub-models to simulate the phenomena above.

2. *Section 2.2.2.1 Wind Field* should describe and clearly state the limitations of the model related to its ability to model low wind speeds (*i.e.,* less than 2m/s) and its ability to model fluctuating wind speeds.

3. *Section 2.2.2.3 Stratification* should describe and clearly state the limitations of the model related to its ability to model atmospheric stabilities (*e.g.,* F stability). The description should indicate if temperature and/or turbulence profiles may be invoked at the upwind boundary or if forcing functions may be invoked.

4. *Section 2.2.3.1 Terrain Types Available and Section 2.3.12 Complex Effects: Terrain* should describe and clearly state the limitations of the model related to its ability to model sloping terrain, including any special methods to model (*e.g.,* gravity vector adjustment, sub-model for adjusting Cartesian grids, *etc*). Unique modeling characteristics that may alter the terrain should be described (*e.g.,* Cartesian Grid, Porosity-Distributed Resistance methodology, *etc*).

5. *Section 2.2.4.1 Obstacle Types Available and Section 2.3.13 Complex Effects: Obstacles* should describe and clearly state the limitation of the model related to its ability to model complex geometries, including the limitations based on the grid or mesh options available (reference can be made to *Section 2.4.3.1 Computational Mesh*). Unique modeling characteristics that may alter the obstructions should be described (*e.g.,* Cartesian Grid, Porosity-

Distributed Resistance methodology, *etc*).

6. *Section 2.3.1.5 Turbulence Modeling* should describe and clearly state the limitation of the model related to its ability to model turbulence, including the turbulence sub-models available (*e.g.,* Algebraic, Favre- or Reynolds-Averaged Navier Stokes, Reynolds Stress Transport, Spalart-Allmaras One-Equation, K-Epsilon Two Equation, K-Omega Shear Stress Transport, Large Eddy Simulation, Detached Eddy Simulation, *etc*).

7. *Section 2.3.1.7 Boundary Conditions* should describe and clearly state the limitation of the model related to its ability to model certain boundary conditions, including the boundary condition specifications available (*e.g.,* wall functions, full-slip, no-slip, partial-slip, inlet/outlet boundaries, injection boundary, periodic boundary, mirror/symmetry boundary, *etc*).

8. *Section 2.3.11 Complex Effects: Aerosols* should describe and clearly state the limitations of the model related to its ability to model different source terms, including:

a. Ability to handle the dispersion of vapors from a flashing source term.

b. Ability to handle the dispersion of vaporized aerosol formed from mechanical fragmentation or other means of a high pressure release.

c. Ability to handle the dispersion of vaporization from aerosol that has settled out (*i.e.* rainout).

9. *Section 2.4.3.1 Computational Mesh* should clearly state all features of the computational mesh (*e.g.,* Automatic, Manual, Structured, Unstructured, Cartesian, Curvilinear, Body-fitted, H-Type, C-Type, O-Type, Triangle/Tetrahedral, Quadrilateral/Hexahedral, Adaptive, Multi-Block, *etc*).

10. *Section 2.4.3.2 Discretization Methods* should describe and clearly state the limitation of the model related to its numerical solution methodologies, including a description of the temporal discretization methodologies available (*e.g.,* Implicit, Explicit, Multi-Stage Schemes, Order of Runge-Kutta, MUSCL, QUICK, Courant-Friedrchs-Lewy limitations, *etc*) and description of the spatial discretization methodologies available (*e.g.,* Central Schemes, Upwind Schemes, *etc*).

11. *Section 2.6 Sources of Model Uncertainty* should describe and clearly state all known uncertainties described in previous sections and any uncertainties due to any other physical parameters and assumptions inherently built into the model.

12. *Section 2.6.4 Sensitivity to Input* should include a parametric analysis. Alternatively, a sensitivity analysis of the validation study may be referenced, as described below in *Section 6.2 Evaluation Against MEP Quantitative Assessment Criteria.*

13. *Section 2.7 Limits of Applicability* should summarize the limitations of the model described in previous sections and any other limitations inherently built into the model.

14. *Section 6.2 Evaluation Against MEP Quantitative Assessment Criteria* should provide the following as part of the submitted validation phase:

a. An uncertainty analysis that accounts for model uncertainty due to uncertainty in the assumption of input parameters specified by the user.[1] The model uncertainty analyses should address the following:

i. Analysis of source term(s). Certain models have built-in source models that are able to calculate the flashing, mechanical fragmentation and subsequent aerosol formation and rainout, resultant liquid trajectory, flow and vaporization. It is recommended that the built-in models be used, where appropriate and applicable, as those are the most likely to be used during hazard analyses. For models without built-in source models, it is recommended that appropriate source term model(s)[2] be used that provides an accurate depiction of the experiment that can be inputted into the dispersion model as it should generally produce better fidelity. Alternatively, simplified source term inputs may be used with justification provided for the selection of pool diameter(s), vaporization rate(s), and other specified sources along with a sensitivity analysis of the vaporization rate and resultant pool diameter(s). A source term based on an instantaneously formed pool with a vaporization rate and pool size equal to the discharge rate (mass balance) based on empirically selected vaporization rates of 0.085kg/m^2/sec and 0.167kg/m^2/sec should be included in the sensitivity analysis.

ii. Analysis of boundary conditions, including wall conditions, slip conditions, surface roughness, thermal properties, and any other parameters specified for the boundaries that may otherwise have a significant influence on the model results. The analysis should demonstrate the impact of the boundary conditions on the analysis. This may be accomplished by demonstrating that the boundary conditions do not have a significant influence on the analysis (*i.e.,* boundaries are sufficiently far away not to influence the flow field of the vapor cloud) and/or through a sensitivity analysis of the boundary conditions. For boundary conditions associated with the ground, a sensitivity analysis, including any bounds (*e.g.,* a no-slip v. free-slip) of the boundary conditions should be evaluated.

iii. Analysis of wind profile. Certain models are only able to provide steady-state wind profiles and/or direction. Other models are able to input/calculate transient, fluctuating, or periodic (*e.g.,* sinusoidal) wind profiles and directions. It is recommended that the most accurate depiction of the wind field be used, as it should provide better fidelity. The wind field throughout the domain should be fully established before the source term initializes. Surface roughness sensitivity analysis should be included based on user guide documentation or other recommended and generally accepted good engineering practices that represent surface roughness for the area.

iv. Analysis of sub-models. Certain models contain multiple sub-models (*e.g.,* turbulence models) that may be selected by the user. It is recommended that the most appropriate and applicable sub-models be used, as it should provide better fidelity. Technical justification for the selected sub-models should be provided. If multiple sub-models may be appropriate and applicable, sensitivity analysis should be used for a range of sub-models. Any specification in associated coefficients may also be subject to sensitivity analysis, where warranted.

v. Analysis of temporal discretization/averaging. Certain models may specify different time-averages. Time averages should reflect the time averaged data of the experimental measurements or less. Where time averages cannot be specified to reflect the time-averaged data of the experimental measurements, sensitivity analyses or corrections should be provided.

vi. Analysis of spatial discretization/averaging and grid resolution. An analysis should evaluate the effect of any spatial averaging by the model. For Computational Fluid Dynamics (CFD) models, a grid sensitivity analysis should be provided that demonstrates grid independence or convergence to a grid independent result (*e.g.,* Richardson extrapolation). If overly cost-prohibitive, it may be acceptable to selectively refine grids in the areas of principal interest only based on user guide documentation or other recommended and generally accepted good engineering practices.

vii. Analysis of geometrical representation for sloped and obstructed cases. Certain models may not be able to model sloped and obstructed flow fields. Others may be limited in the representation of slopes (*e.g.,* change in gravity vector), or in the representation of complex shapes or curvatures by simpler geometries (*e.g.,* to fit a Cartesian grid). The effect of these simplifications should be discussed or evaluated.

b. An uncertainty analysis that accounts for model uncertainty due to

[1] Model uncertainty due to the uncertainty of the physical parameters and assumptions inherently built into the model is not required to be quantified, although these limitations should clearly be stated in the scientific assessment.

[2] Source term models may be supplemented with an evaluation in accordance with Model Assessment Protocol (MAP) published by the FPRF in Ivings, *et al., LNG Source Term Models for Hazard Analysis: A Review of the State-of-the-Art and an Approach to Model Assessment* (Mar. 2009) (available at *http://www.nfpa.org*) or equivalent Health and Safety Executive report, *LNG Source Term Models for Hazard Analysis: A Review of the State-of-the-Art and an Approach to Model Assessment,* RR789, 2010 (available at *http://www.hse.gov.uk/research/rrhtm/rr789.htm).*

uncertainty in the output used for evaluation. The analyses should address the following:

i. Analysis of spatial output. Certain models may be limited in the output of the cross wind concentration profile (*e.g.,* Gaussian concentration profiles in the cross-wind direction). The maximum arc wise concentration should be based on the location of the experimental sensor data that produced the maximum arc wise concentration relative to the cloud centerline. The centerline concentration of the model may not necessarily be representative of the maximum concentration measurement location. Any interpolations and extrapolations used to determine concentrations should be documented, evaluated and discussed. If a model cannot represent the actual location of the sensor relative to the centerline, the effect of these simplifications should be discussed or evaluated.

ii. Analysis of temporal output. Certain models may be limited in the temporal resolution that can be outputted. Any interpolations and extrapolations used to determine concentrations should be documented, evaluated and discussed. If desired, transient data of the model and experimental data may be provided to supplement the maximum arc wise values to allow for more detailed comparisons with the experimental data, including the evaluation of discrepancies due to spurious experimental or model results.

c. An uncertainty analysis that accounts for experimental uncertainty due to uncertainty in the sensor measurement of gas concentration,[3] where known. Other sources of uncertainty may also be included.

d. Graphical depictions of the predicted and measured gas concentration values for each experiment with indication of the experimental and model uncertainty determined from the analyses described above. Vertical error bars should be used to represent the uncertainty.

e. Calculation of the specific performance measures (SPMs) below in addition to those specified in the MEP:

Name	Specific Performance Measure	Advantage
Concentration Safety Factor	$CSF = \left\langle \frac{C_p}{C_m} \right\rangle$	Straightforward, easy to understand metric that compares the predicted concentration to the measured concentration.
Concentration Safety Factor to Lower Flammability Limit (LFL	$CSF_{LFL} = \left\langle \frac{C_p}{LFL} \right\rangle$	Straightforward, easy to understand metric that compares the predicted concentration to the measured LFL at the measured/interpolated distance to the LFL.
Distance Safety Factor to LFL	$DSF_{LFL} = \left\langle \frac{X_{p,LFL}}{X_{m,LFL}} \right\rangle$	Straightforward, easy to understand metric that compares predicted distance to the LFL to the measured/interpolated distance to the LFL.

f. Calculation of SPMs specified in the MEP for each experiment and data point in addition to the average of all experiments.

g. A tabulation of all simulations, including all specified input parameters, calculated outputs.

h. A tabulation of all calculated SPMs.[4]

i. All relevant input and output files used.

Issued in Washington, DC, on August 24, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–21588 Filed 8–30–10; 8:45 am]

BILLING CODE 4910–60–P

[3] Experimental uncertainty due to the sampling time, time averaging, spatial/volumetric averaging, cloud meander, and other errors associated with the experiment are not required to be quantified, but the analysis may benefit from them being evaluated or discussed.

[4] If the model predictions are outside the experimental uncertainty interval or MEP SPMs, this does not necessarily mean that the model is unacceptable, but may alternatively impact the safety factor associated with the model usage.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Wednesday, September 15, 2010 at 1:30 p.m. M.D.T.

ADDRESSES: The meeting will be held at the offices of Xcel Energy, 1800 Larimer Street, 2nd Floor, Conference Center, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman (202) 245–0202. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: RETAC arose from a proceeding instituted by the Board, in *Establishment of a Rail Energy Transportation Advisory Committee,* EP 670. RETAC was formed to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy

resources, particularly, but not necessarily limited to, coal, ethanol, and other biofuels. The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items include further consideration of a white paper on industry Best Practices; a Performance Measures subcommittee update on the trends shown in the most recent industry data; discussion of how potential regulation of coal plant emissions may impact coal/rail demand in the future; discussion of railroads' preparations for the fall and winter seasons; and roundtable discussions on shipment ratability, utility inventory levels, current rail operations, and rail service metrics.

The meeting, which is open to the public, will be conducted pursuant to RETAC's charter and Board procedures. All guests will need to check in at the front desk, show a picture I.D., receive a visitor's badge, and will be escorted to the 2nd floor.

Further communications about this meeting may be announced through the Board's Web site at *www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: August 26, 2010.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–21796 Filed 8–30–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Chrysler

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Chrysler Group LLC (Chrysler) petition for exemption of the Fiat 500 vehicle line in accordance with 49 CFR Part 543, *Exemption From Vehicle Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard.*

DATES: The exemption granted by this notice is effective beginning with the 2012 Model Year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–443, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated June 16, 2010, Chrysler requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Fiat 500 vehicle line, beginning with MY 2012. The petition requested an exemption from parts-marking requirements pursuant to 49 CFR 543, *Exemption From Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under Section § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one of its vehicle lines per year. Chrysler petitioned the agency to grant an exemption for its Fiat 500 vehicle line beginning with MY 2012. In its petition, Chrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. Chrysler will install the Sentry Key Immobilizer System (SKIS) antitheft device as standard equipment on the vehicle line. The major components of the SKIS device consist of: A Powertrain Control Module (PCM), a Totally Integrated Power Module (TIPM), a Sentry Key Remote Entry Module (SKREEM), a transponder key fob and an ElectroMechanical Instrument Cluster (EMIC) which controls the telltale function only. According to Chrysler, all of these components work collectively to perform the immobilizer function. Chrysler also stated that its SKIS device does not provide a visible or audible indication of unauthorized vehicle entry (*i.e.,* flashing lights or horn alarm).

Chrysler stated that the SKIS device provides passive vehicle protection by preventing the engine from operating unless a valid electronically encoded key is detected in the ignition lock cylinder. According to Chrysler, the immobilizer feature is activated when the key is removed from the ignition lock cylinder. Only a valid key inserted into the ignition lock cylinder will allow the vehicle to start and continue to run.

Chrysler stated that the Sentry Key Immobilizer Module (SKIM), also known as the Sentry Key Remote Entry Module/SKREEM, or the Body Control Module/BCM are integral to the Body Computer Module (BCM) on the Fiat 500 vehicle line. Chrysler also stated that the BCM contains a radio frequency (RF) transceiver and microprocessor that receives RF signals from the Sentry Key transponder to the keyfob through a tuned antenna. According to Chrysler, the BCM also serves as the Remote Keyless Entry (RKE) RF receiver. Specifically, Chrysler stated that the SKIS device uses radio frequency communication to obtain confirmation that the key in the ignition switch is a valid transponder key for operating the vehicle. To avoid any perceived delay when starting the vehicle with a valid key and to prevent unburned fuel from entering the exhaust, the engine is permitted to run for no more than 2 seconds if an invalid key is used. Chrysler stated that when the ignition switch is turned on, the BCM transmits a signal to the transponder in the key and waits for a response from the transponder. If the response identifies the key as invalid, or if no response is received from the transponder key, Chrysler stated that the BCM sends an invalid key message to the Powertrain Control Module (PCM), and the PCM will disable engine operation (after the initial 2-second run) based upon the status of the BCM messages. Chrysler further stated that only six consecutive invalid vehicle start attempts would be permitted and all other attempts would be locked out.

Chrysler stated that it will also incorporate an unauthorized vehicle start telltale light into the device that will operate as a security indicator in the ElectroMechanical Instrument Cluster (EMIC). According to Chrysler, the telltale will alert the owner that an unauthorized vehicle start attempt has been made. Chrysler stated that upon an unauthorized start attempt, the telltale will flash on and off when the ignition switch is turned to the "ON" position. Chrysler stated that while the telltale acts as a security indicator, it also acts as a diagnostic indicator. Chrysler stated that if the SKREEM detects a system malfunction and/or the SKIS device becomes inoperative, the security indicator will stay on. However, if the SKREEM detects an invalid key or if a key transponder-related fault exists, the security indicator will flash.

In addressing the specific content requirements of 543.6, Chrysler provided information on the reliability and durability of the device. Chrysler conducted tests based on its own specified standards and stated its belief that the device meets the stringent performance standards prescribed. Specifically, Chrysler stated that its device must demonstrate a minimum of 95 percent reliability with 90 percent confidence. In addition to the design and production validation test criteria, Chrysler stated that the SKIS device also undergoes a daily short term durability test and 100 percent of its systems undergo a series of three functional tests for durability prior to being shipped from the supplier to the vehicle assembly plant for installation in its vehicles.

Chrysler also stated that each ignition key used in the SKIS device has an integral transponder chip included on the circuit board beneath the cover of the integral Remote Keyless Entry (RKE) transmitter. Chrysler further stated that in addition to having to be cut to match the mechanical coding of the ignition lock cylinder and programmed for operation of the RKE system, each new Sentry Key has a unique transponder identification code that is permanently programmed into it by the manufacturer, and must be programmed into the SKREEM to be recognized by the SKIS device as a valid key. Chrysler stated that once a transponder key has been programmed to a particular vehicle, it cannot be used on any other vehicle.

Chrysler stated that while there is no theft data available for the Fiat 500 because it is a new vehicle line introduction, the theft rate experience of the Jeep Grand Cherokee which has been installed with the SKIS immobilizer device since MY 1999 indicates that it is projected to have a theft rate lower than the median theft rate. Chrysler stated that NHTSA's theft rate data for the Jeep Grand Cherokee indicates that the inclusion of a standard immobilizer system has resulted in a 52.3 percent net average reduction in vehicle thefts for the Jeep Grand Cherokee vehicle line. The average theft rate for the Jeep Grand Cherokee vehicle for four model years prior to installation of an immobilizer device as standard equipment (1995–1998) was 5.3574, which is significantly higher than the 1990/1991 median theft rate of 3.5826. However, the average theft rate for the six model years after installation of the standard immobilizer device (1999–2005) was 2.5492, which is significantly lower than the median. The Jeep Grand Cherokee vehicle line was granted an exemption from the parts-marking requirements beginning with MY 2004. Chrysler stated that it expects Fiat 500 vehicles equipped with standard ignition immobilizer systems to mirror the results achieved by the Jeep Cherokee vehicles when ignition immobilizer devices were included as standard equipment.

Based on the supporting evidence submitted by Chrysler on the Jeep Grand Cherokee, the agency believes that the antitheft device for the Fiat 500 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon supporting evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Chrysler has provided adequate reasons for its belief that the antitheft device for the Fiat 500 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Chrysler provided about its device.

For the foregoing reasons, the agency hereby grants in full Chrysler's petition for an exemption for the MY 2012 Fiat 500 vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements with respect to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Chrysler decides not to use the exemption for this vehicle line, it must formally notify the agency. If such a decision is made, the vehicle line must be fully marked as required by 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Chrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: August 26, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–21758 Filed 8–30–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 25, 2010.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be

addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 30, 2010 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0005.

Type of Review: Extension without change of a currently approved collection.

Title: Letterhead applications and notices filed by brewers TTB REC 5130/2.

Form: TTB F 5130.10.

Abstract: The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. TTB F 5130.10 is similar to a permit and, when approved by TTB, is a brewer's authorization to operate. Letterhead applications and notices are necessary to identify brewery activities so that TTB may ensure that proposed operations do not jeopardize Federal revenues.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10,593 hours.

Clearance Officer: Gerald Isenberg, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005; (202) 453–2097

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina M. Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–21669 Filed 8–30–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One Individual Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of one newly-designated individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to Executive Order 13224, is effective on August 24, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac)* or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On August 24, 2010 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The designee is as follows:

1. ABU–AL–KHAYR, Muhammad Abdallah Hasan (a.k.a. ABU–AL–KHAYR, Muhammad Bin-'Abdullah Bin-Hamd; a.k.a. ABUL–KHAIR, Mohammed Abdullah Hassan; a.k.a. AL–HALABI, Abdallah; a.k.a. AL–HALABI, Abdullah; a.k.a. AL–HALABI, Abu 'Abdallah; a.k.a. AL–JADDAWI, Muhannad; a.k.a. AL–MADANI, 'Abdallah al-Halabi; a.k.a. AL–MADANI, Abu Abdallah; a.k.a. AL–MAKKI, Abdallah; a.k.a. EL HALABI, Abdallah); DOB 19 Jun 1975; alt. DOB 18 Jun 1975; POB Al-Madinah al-Munawwarah, (Medina) Saudi Arabia; National ID No. 1006010555 (Saudi Arabia); Passport A741097 (Saudi Arabia) issued 14 Nov 1995 expires 19 Sep 2000 (individual) [SDGT].

Dated: August 24, 2010.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2010–21670 Filed 8–30–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0046]

Agency Information Collection (Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 30, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0046" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0046."

SUPPLEMENTARY INFORMATION:

Title: Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran, VA Form Letter 29–596.

OMB Control Number: 2900–0046.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–596 is use by an administrator, executor, or next of kin to support a claim for money in the form of unearned or unapplied insurance premiums due to a deceased veteran's estate.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 24, 2010, at page 36154.

Affected Public: Individuals or households.

Estimated Annual Burden: 78 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 312.

Dated: August 26, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–21632 Filed 8–30–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0066]

Agency Information Collection (Request to Employer for Employment Information in Connection With Claim for Disability Benefits) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 30, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0066" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0066."

SUPPLEMENTARY INFORMATION:

Title: Request to Employer for Employment Information in Connection with Claim for Disability Benefits, VA Form Letter 29–459.

OMB Control Number: 2900–0066.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–459 is used to request employment information from an employer in connection with a claim for disability benefits. VA uses the information to establish the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 24, 2010, at pages 36154–36155.

Affected Public: Individuals or households.

Estimated Annual Burden: 862 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,167.

Dated: August 26, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–21634 Filed 8–30–10; 8:45 am]

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Tuesday,
August 31, 2010

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100212086–0307–03]

RIN 0648–AY68

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specific measures for the implementation of Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery, which would consist of: An individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting); and cooperative (coop) programs for the at-sea (whiting only) mothership (MS) and catcher/processor (C/P) trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 would establish fixed allocations for limited entry (LE) trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch.

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21. Accordingly, this rule proposes the key components that would be necessary to implement the trawl rationalization program at the start of the 2011 fishery. NMFS previously published a proposed rule on June 10, 2010 that would restructure and clarify the Pacific Coast groundfish regulations to more closely track the organization of the proposed measures (the initial issuance proposed rule). The proposed rule and references to the groundfish regulations in the preamble for this proposed rule cite to the applicable sections of in the initial issuance proposed rule. The initial issuance proposed rule would also establish the allocations set forth under Amendment 21 and procedures for initial issuance of permits, endorsements, quota shares (QS), and catch history assignments under the IFQ and coop programs. This rule supplements the prior initial issuance proposed rule, and provides additional details, including: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, quota share accounts, vessel quota pound accounts, further tracking and monitoring components, and economic data collection requirements. NMFS is also planning a future "cost recovery" rule based on a recommended methodology yet to be developed by the Pacific Fishery Management Council (the Council).

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on September 30, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY68, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal, at *http://www.regulations.gov.*
- *Fax:* 206–526–6736; *Attn:* Jamie Goen.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070; *Attn:* Jamie Goen.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northwest Region, e-mailed to *David_Rostker@omb.eop.gov;* or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206–526–4656; (fax) 206–526–6736; *Jamie.Goen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents, including the Final Environmental Impacts Statements for Amendment 20 and Amendment 21, are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery, which would consist of: An individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting sectors); and cooperative (coop) programs for the at-sea (whiting only) mothership (MS) and catcher/processor (C/P) trawl fleets. Amendment 21 would establish fixed allocations for limited entry (LE) trawl participants. On May 12, 2010 (75 FR 26702), NMFS published a notice of availability of Amendments 20 and 21, and—consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—made its decision to partially approve the amendments on August 9, 2010.

Because of the complexity of these amendments, NMFS determined that implementation would take place through multiple rulemakings. The first rule developed by NMFS would: Restructure and clarify the Pacific Coast groundfish regulations to more closely track the organization of the proposed management measures, establish the allocations set forth under Amendment 21, and establish procedures for the initial issuance of permits, endorsements, QS, and catch history assignments under the IFQ and coop programs. Council staff and NMFS coordinated to develop this initial issuance rule in early 2010, and the Council deemed a version of the initial issuance rule necessary or appropriate for the implementation of Amendments 20 and 21 at its April 2010 meeting in Portland, Oregon. At the April meeting,

the Council directed Council staff to make specific revisions to the regulations and additional edits as appropriate, convened a Regulatory Deeming Workgroup (RDW) to review the continuing regulatory development, and delegated authority to the Executive Director of the Council to further deem the rule as necessary or appropriate prior to their transmittal to NMFS for publication. On May 7, 2010, the Executive Director transmitted Amendments 20 & 21 to NMFS for review by the Secretary of Commerce. In that same letter, the Executive Director deemed that the revised rule continued to be necessary or appropriate for the purpose of implementing the plan amendments consistent with the Council's intent, and after review by NMFS headquarters, the initial issuance proposed rule was published in the **Federal Register** on June 10, 2010 (75 FR 32994). The preamble to the June 10, 2010, proposed rule provided the detailed background for the proposed management measures and is not repeated here.

After the April 2010 Council meeting, Council staff and NMFS coordinated to develop the second set of draft regulations, which would establish several of the program components required for implementation of the rationalized trawl fishery in 2011, including IFQ gear switching provisions, details of observer requirements and first receiver catch monitor programs, first receiver site licenses, equipment requirements, catch weighing requirements, retention requirements in the shorebased IFQ program, QS accounts, vessel accounts for use of quota pounds (QP), requirements for coop permits and coop agreements, further tracking and monitoring components, and economic data collection requirements. A version of the program components proposed rule was provided to the RDW for its June 10–11, 2010 meeting to review and comment to the Council. NMFS provided this version for the Council's consideration at its June 2010 meeting. At the June 2010 meeting, the Council directed NMFS to continue drafting the proposed rule consistent with the Council's direction on remaining issues to be addressed, and to provide a revised version for the RDW to review at its June 30, 2010 meeting. The Council delegated authority to its Executive Director to deem the final version of the program components proposed rule as necessary or appropriate after consideration of any further comments by the RDW. The RDW reviewed additional revisions to the program components proposed rule on June 30, 2010, and provided its comments to the Council. NMFS completed drafting the regulations in close coordination with Council staff, and on July 12, 2010, provided its final version of the program components proposed rule to the Council. Council staff made additional revisions, and on July 20, 2010, the Executive Director deemed the regulations to be necessary or appropriate to implement Amendments 20 and 21 consistent with the Council's action.

The program components proposed rule provides details necessary for implementation of trawl rationalization by January 2011. Some of the provisions apply to several or all of the programs (*i.e.,* Shorebased IFQ Program, MS Coop Program, C/P Coop Program), while other details only affect one program, as discussed below.

As mentioned in the preamble to the initial issuance proposed rule (75 FR 32994, June 10, 2010) on page 32997, the management approaches set forth in the trawl rationalization program consist of different types of limited-access approaches. These limited-access approaches grant permission to the holder of the privilege or permit to participate in the program. Such permission may be revoked, limited, or modified at any time. In other words, it is a conditional privilege. Amendment 20 includes features such as annual renewal requirements and regular program reviews that would ensure program goals are being met, provide NMFS the ability to review, track, and monitor program implementation and needs, and prevent the perception that the program confers "rights" as opposed to privileges.

Amendment 20 establishes programs that are "limited-access privilege programs," which are consistent with the MSA provisions at section 303A. Limited-access privileges, including the QS, QP, and catch history assignments, may be revoked, limited or modified at any time in accordance with the MSA, and do not create any right of compensation to the holder of the limited-access privilege, QS, QP, or catch history assignment if revoked, limited or modified. The limited-access privilege program does not create any right, title, or interest in or to any fish before the fish is harvested by the holder and shall be considered a grant of permission to the holder of the limited-access privilege to engage in activities permitted by the limited-access privilege program. For further statutory provisions related to limited-access privileges, *see* section 303A of the MSA.

Section 303A contains an "antitrust savings clause" that provides that "nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition." NOAA advises that any fishery participants who are uncertain about the legality of their activities under the antitrust laws of the United States should consult legal counsel prior to commencing those activities.

Changes Applicable to All Programs

Recordkeeping and Reporting

The program components proposed rule includes several new recordkeeping and reporting requirements, including provisions for new declarations, electronic fish tickets, a mandatory economic data collection program (described further under "Economic Data Collection (EDC) Program" later in this preamble), scale reports, annual coop reports, and cease fishing reports.

The proposed rule would expand the use of declarations for the management of the groundfish fisheries. Current regulations require groundfish vessels to submit declarations in order to facilitate tracking of compliance with area management measures when a vessel is required to carry a vessel monitoring system (VMS). The proposed rule would use declarations not only to complement VMS requirements, but also to establish what fishery a vessel would be participating in for the purpose of catch accounting and identifying what other requirements would be applicable to that vessel. The proposed rule would also add a declaration for vessels participating in the Shorebased IFQ Program under gear switching, as described below. Motherships would be exempted from the requirement to submit declarations, because motherships do not operate as a catcher vessel, are not subject to any groundfish conservation areas (GCAs), are not required to carry a VMS, and do not switch between various gear types such that a declaration would be of any use.

Landings in the Shorebased IFQ Program would be reported through a Federal electronic fish ticket system. Shorebased IFQ first receivers, which would be issued a first receiver site license from NMFS, would complete the

landings information for each fishing trip by a vessel offloading at their site.

Scale reports would be required for scales used at shorebased IFQ first receivers and for scales used on mothership and catcher/processor vessels. Scales used to weigh catch on vessels would be required to be inspected annually and tested daily. Records of the scale tests and records of the scale printouts (catch weight and cumulative weight) would be required to be maintained onboard the vessel until the end of the year during which the reports were made, and be made available to NMFS upon request. In addition, the vessel owner would be required to retain printed reports for 3 years after the end of the year during which the printouts were made. IFQ first receivers would be required to allow for in-season scale testing. IFQ first receivers would also be required to ensure that printouts of the scale weight of each delivery or offload are made available to NMFS staff or to authorized officers at the time printouts are generated. An IFQ first receiver would be required to maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by NMFS staff or authorized officers for 3 years after the end of the fishing year during which the printout was made.

Additional new recordkeeping and reporting requirements for the coop fisheries would include a requirement for an annual coop report describing the coop allocation, the total catch (retained and discards) of the coop, monitoring, and other coop activities. Cease fishing reports would be required in the coop fisheries to report to NMFS when a coop has completed fishing for the year.

Permits

Under the proposed initial issuance rule, several new permits that could be registered to a vessel would be issued. The program components proposed rule sets forth the rules for registration and transfer of registration that would apply to these permits. Consistent with current regulations, when the owner of a limited entry trawl permit registered to a vessel operating in the Shorebased IFQ Program transfers the registration to another vessel, the registration would be effective at the start of the next cumulative trip limit period. This provision would remain in place because trip limits would remain in place in the Shorebased IFQ Program (for non-IFQ species and for Pacific whiting outside the primary whiting season). A transfer of registration for MS/CV-endorsed limited entry trawl permits would also be effective at the start of the next cumulative limit period because vessels registered to MS/CV-endorsed permits would be eligible to participate in both the Shorebased IFQ Program and the MS Coop Program. Transfers of MS permits and C/P-endorsed limited entry trawl permits would be effective immediately upon reissuance to the new vessel, because neither of these permits would be affected by trip limits.

With respect to transfer of MS/CV-endorsed permits, the Council motion included a provision (Appendix D, Page D–34) that would allow an MS/CV-endorsed permit to have two changes in vessel registration in the same calendar year, provided that the second change in vessel registration would return the registration to the original vessel assigned to the permit in that year. Transfer rules for limited entry trawl permits without an MS/CV endorsement, however, limit the permit owner to only one transfer in a given year. During its March 2010 meeting, the Council considered that because vessels registered to an MS/CV-endorsed permit would be able to deliver whiting to the MS sector and would also potentially be able to deliver IFQ groundfish to shorebased first receivers, it may be possible for owners of an MS/CV-endorsed permit to circumvent the restrictions on transfers of limited entry permits in the Shorebased IFQ Program for owners of permits that lack an MS/CV-endorsement. Consequently, the Council decided that if the owner of an MS/CV-endorsed permit were to transfer registration of the permit a second time, the vessel to which the permit is transferred to would not be eligible to fish in the Shorebased IFQ Program under that permit during the remainder of the year. The Council's motion on this issue did not address the timing of when the second transfer would be effective. Under the regulations being proposed, the second transfer would be effective at the start of the next cumulative limit period (*i.e.,* 2-month period). If there are no trip limits for the mothership fishery, then this restriction on the effective date of transfers may not be necessary. NMFS solicits public comment on the effective date for a second transfer within the same year of an MS/CV-endorsed limited entry permit.

Pacific whiting vessel licenses, currently used in the at-sea whiting fishery, would be removed under this proposed rule. Consequently, section 660.26 of the initial issuance proposed rule would be removed from the regulations. These licenses, which were first issued in 2009 as an interim step in implementing Amendment 10, would no longer be necessary under the trawl rationalization program. Under trawl rationalization, participation in the mothership and catcher/processor sectors would be limited by vessel permits that would replace the Pacific whiting vessel licenses: MS permits and MS/CV-endorsed limited entry trawl permits for the mothership sector and C/P-endorsed limited entry trawl permits for the catcher/processor sector. Initial eligibility and application processes for these permits and endorsements were proposed in the initial issuance proposed rule (75 FR 32994, June 10, 2010). Vessels fishing for whiting in the Shorebased IFQ Program would be limited through the existing limited entry trawl permit system, and thus, Pacific whiting vessel licenses would no longer be needed.

The at-sea whiting sectors (both mothership and catcher/processor) would require a coop permit for any coops. Coop permits are discussed further in the "at-sea sector" discussion below.

Economic Data Collection (EDC) Program

Trawl rationalization is expected to change both the size and distribution of economic benefits generated by the West Coast groundfish trawl fishery. Recognizing these likely changes in the economic performance of the fishery, and the limitations inherent in voluntary economic data collection programs, the Council voted to implement a mandatory EDC program.

Authority To Implement the EDC Program

Economic data collection from harvesters and processors participating in the West Coast groundfish trawl fishery is required not only to determine if the trawl rationalization goals identified by the Council are being met, but also to meet the heightened requirements for economic analysis contained in the MSA. The MSA (Sec. 303A.(c)(1)(C)(iii)) requires that any limited access privilege program (LAPP) shall promote social and economic benefits. In addition, Sec. 303A(c)(1)(G) of the MSA contains a monitoring requirement to determine whether a LAPP is meeting its goals. The Council's stated goals include several economic performance measures such as: a profitable and efficient fleet, operational flexibility, minimize adverse impact on fishing communities, promotion of economic and employment benefits, and to provide quality product to consumers. The monitoring of economic performance can also provide needed

information to fishery managers about how to best use quota that has been reserved for adaptive management. Without the collection of economic data it would be difficult, if not impossible, to measure the economic benefits and consequences of the proposed groundfish trawl rationalization program. The EDC program seeks to provide the economic data needed not only to meet legislative mandates, but also to provide the Council with valuable information for future fisheries management decisions. At the same time, the design of this program is mindful of confidentiality concerns and the compliance burden created for harvesters and processors.

Type of Information To Be Submitted

In order for economists to provide decision makers with information on the magnitude and distribution of economic benefits of the trawl rationalization program, available data collection must provide reliable information on (1) the relevant parties whose economic welfare is affected by trawl rationalization, and (2) the elements (such as earnings, expenditures and employment) that comprise each party's economic welfare derived from the groundfish trawl fishery. To meet these needs, NMFS has designed mandatory survey questionnaires for catcher vessels (both delivering shoreside and to motherships), catcher-processors, motherships, shoreside processors, and first receivers. These mandatory surveys would replace the existing voluntary survey program undertaken with the shoreside limited entry groundfish trawl fleet. This data collection would provide, for the first time, a comprehensive source of economic information that can be used to quantify the economic benefits and consequences accruing to shoreside processors, catcher-processors, motherships, harvesters, individuals employed in the fishery, and regional economic impacts.

Information Confidentiality

Under Federal law, EDC information would be considered confidential and, as such, would not be disclosed to the public. In particular, under the MSA, information that is submitted to NMFS pursuant to the MSA is considered confidential and cannot be disclosed. The information submitted through the questionnaires would be a required submission under the MSA. If a Freedom of Information Act (FOIA) request for EDC were received by NMFS, EDC information would only be released in aggregated form, that is, without identifiers and other information components that, if released, would allow someone to identify the submitter and result in competitive or other harm to the submitter. Further information about NMFS' confidentiality and aggregation guidance can be found on its Web sites. NMFS' reports or other publications on trawl rationalization would discuss EDC information, but only in aggregated form.

Purposes for the EDC Information

Topics that would be addressed by economic analysis of the trawl rationalization program include the magnitude and distribution of economic benefits generated by the groundfish trawl fishery, regional economic impacts, employment, the efficiency of harvesting and processing operations within the fishery, capacity utilization, the functioning of the quota market, spillover effects into other fisheries, product quality, and incentives to reduce bycatch. Addressing these topics would require collecting data at the level of the individual harvesting vessel, processing vessel, first receiver and processing plant. The data collection would be done on an annual basis, with specific questionnaires designed for catcher vessels, catcher-processors, motherships, and first receivers and shoreside processing plants. Due to the relatively small number of vessels or processing plants in each of these populations, a census of all members of the survey population would be conducted each year. In addition to the mandatory surveys of harvesters and processors, NMFS is conducting voluntary social surveys of a wide range of participants in the fishery.

Deadlines for EDC Form Submission

The questionnaires would be mailed to permitted and licensed fishery participants (both active and inactive), as well as others who according to available databases are required to complete a questionnaire. Baseline information is necessary for NMFS and the Council to understand program effects. To achieve a complete and useful baseline database, NMFS would require 2009 and 2010 trawl fisheries participants to provide baseline economic information. Although it is possible that certain participants may not possess baseline information, or may have dropped out of the fishery, NMFS believes it must attempt to acquire the information. Requiring submission of 2009 and 2010 baseline information and not older information reduces the submission burden.

To facilitate program administration, NMFS would attempt to mail questionnaires to all relevant fishery participants on or around May 1 of every year. However, it is possible that NMFS would not identify all participants who would be obligated to submit a questionnaire, thus it would ultimately be the relevant participant's responsibility to obtain a questionnaire and complete it. NMFS would conduct outreach to facilitate identification of those who must provide both baseline and annual questionnaires.

NMFS believes that persons required to submit EDC questionnaires must have sufficient time to retrieve necessary information and complete the questionnaire. Information submitted in annual questionnaires is typically similar to information used to complete tax returns. Given these considerations, NMFS proposes that EDC questionnaires would be due no later than September 1 for both baseline and annual EDC questionnaires. Thus, baseline questionnaires would be submitted before September 1, 2011. Annual questionnaires would be submitted before September 1 of each corresponding year, that is, September 1 of the year following the year for which the information must be provided.

Compliance With the EDC Form Submission Requirement

Because questionnaire submission would be mandatory, NMFS must ensure there are compliance incentives. In addition to incentives to avoid enforcement actions for failure to submit the questionnaire, another incentive would be to withhold permit issuance or other applications authorizing participation in the trawl program. For example, if a prior year's annual questionnaire is not submitted by a permit applicant or a vessel owner who maintains a vessel account, the application or renewal process would be considered incomplete by NMFS. The permit or renewal application would be denied and an Initial Administrative Determination (IAD) issued setting forth the underlying facts, a discussion and determination. Upon issuance of the IAD, NMFS may withhold issuance of any new annual QS, not reauthorize a vessel account, not register a permit to a vessel, not renew a permit, not issue a license, or other related authorization to a participant. An aggrieved permit or other participation applicant could appeal an IAD through the Office of Administrative Appeals (OAA) in NMFS. An IAD that is not appealed to the OAA within 30 days of the issuance would become final agency action. Thus, if a questionnaire had not been submitted prior to its receipt of an application or renewal request, NMFS

would suspend permit application or renewal processing. Upon receipt of the questionnaire, NMFS would then finish application or renewal processing, assuming the applicant or requestor had met all other requirements.

Who Would Be Required To Submit the EDC Form

The EDC program would require all trawl program participants to submit the questionnaires. These participants include owners, lessees and charterers of, catcher vessels, catcher processor vessels, and mothership vessels; and, first receivers and shorebased processors. For purposes of identifying shorebased processors from whom NMFS would receive questionnaires and relevant economic information, NMFS—in consultation with the RDW—crafted a specific, EDC program only, definition for "shorebased processor." Identifying the "who" among shorebased processors that would be required to submit the questionnaire raised a practical issue. There are a variety of seafood processing operations, including first receivers and primary fish processing operations that subject round or headed-and-gutted fish to the first strokes of a knife. However, a certain amount of "shorebased" fish processing occurs long past the point of the initial processors. For example, commercial processing can occur in major food manufacturing facilities and supermarkets. While NMFS may have authority to collect economic information from certain processing operations, the EDC program was not designed to require information from these operations.

In its consultations with the RDW, NMFS initially proposed that the limited entry permit owner would bear the burden of submitting the questionnaire and all information for vessels, including all vessel economic information. This meant that the permit owner would be required to submit data from "third parties," that is, a person who leases a permit to operate a vessel. In that instance, if the permit owner were unable to obtain the lessee or charter's economic information, it was possible that the permit owner would be unable to submit a completed EDC questionnaire to NMFS. The RDW responded to NMFS' proposal and asked that NMFS not require the permit owner to be responsible for the submission of third-party lessee information.

The problem, according to the RDW, would be that in some circumstances it would be impossible to obtain third-party information. Thus, it would be unfair to impose this burden on the permit owner. In view of the RDW's response, NMFS has changed the requirements it initially proposed before the RDW. Thus, in this proposed rule, NMFS would require that the permit owner submit only the permit owner's information, if required, and not a third-party's information. Further, the permit lessees would be required to submit questionnaires. This eliminates the RDW's concerns and reduces the reporting burden for permit owners and certain other program participants. However, in order to facilitate its ability to identify who must submit a questionnaire, NMFS proposes that permit owners and vessel owners be required to disclose identifying information about lessees and charters.

The RDW also registered concerns about NMFS' use of the administrative permit process to gain compliance with the EDC requirements. In other EDC programs, NMFS has found that holding-up a permit or renewal process for failure to submit a questionnaire resulted in high compliance. NMFS believes that this administrative-based compliance incentive is preferred to enforcement-based incentives. An enforcement-based violation requires a lengthy and administratively-complex adjudication process, while the administrative-based, "complete permit application" process is more efficient and requires fewer resources.

EDC Audit Process

In other EDC programs, NMFS has installed an economic information verification process to ensure that submitted information is accurate and to ascertain sources or causes for anomalous or outlier information. Because an audit process enhances the reliability and accuracy of the information database, NMFS proposes an audit process for the trawl program. The audit program would consist of a process to request submission of supporting documentation, either to NMFS itself, or to a third-party such as a contractor or auditor. Further, NMFS or the third-party could require the submitter to respond to any questions within 20 days, unless an extension is granted by NMFS. A NMFS or third-party auditor would review requested information for verification purposes. Requested information would include financial statements, worksheets, and tax returns. Information submitted in this audit process would be a required submission to either NMFS or the third-party auditor, thus the information would be considered confidential.

Transaction Prices

Separate from the EDC Program, NMFS would collect transaction prices as recommended in the Council motion (Appendix D, A–2.3.2, p.D–14). For collecting transaction values on permits, QS, and QP transactions, the data collection system would have two components: (a) A request for monetary estimates; and (b) key questions that characterize the nature of the transaction. Responses may require a few sentences to describe the nature of transactions. The permits office would use this data to provide the public, via the NMFS IFQ Web site, with simple averages so that the estimates may not reflect the total values of the transactions. Detailed data on the nature of the transactions would be provided to the NWFSC for use in developing more precise estimates using econometric techniques. Because all reporting would be electronic, NMFS would not be requesting copies of supporting documentations, such as sales or lease agreements. Instructions would be provided to encourage retention of supporting documents in order to be responsive to audits that may be conducted by OLE as part of an enforcement action or by NWFSC as part of their economic audit function. Only relevant questions would be asked, with the intent being to keep the list of questions to a minimum.

Observer Program

The initial issuance proposed rule created a separate section (at § 660.116) for regulatory requirements regarding mandatory observer coverage as an interim step until discrete observer regulations were proposed under this program components rule for each trawl program (IFQ, MS, and C/P). Observers have been deployed in the Pacific coast groundfish fisheries since 2001 in the West Coast Groundfish Observer Program (WCGOP). In order to incorporate changes expected under trawl rationalization, NMFS has been adapting the regulations implementing the WCGOP. During this regulatory development, NMFS recognized that each observer's roles and responsibilities would differ between each fishery and may change in the future based upon a specific fishery's requirements or needs. Accordingly, the program components proposed rule removes § 660.116 and reorganizes the observer regulations to follow the overall structure of the regulations, providing detailed requirements by fishery: Shorebased IFQ Program (§ 660.140(h)), MS Coop Program (§ 660.150(j)), and C/P Coop Program (§ 660.160(g)). While a general description of the observer program applicable to all is provided here, sections within each program outline

changes in the proposed regulations specific to each.

Vessels would be required to procure observer services from any one of a number of observer providers that are currently permitted to deploy observers in the North Pacific fisheries. This presents a distinct change for catcher vessels which have previously had no observer coverage or which have had government-funded observers selected and deployed by NMFS. The catcher vessels' cost of procuring observer services may be partially defrayed by the government via a subsidy for at least the first year of the Shorebased IFQ Program, subject to appropriations.

Companies providing observer services (aka observer providers) would be required to comply with all observer support, deployment limitations and logistics and communication in this rule. The requirements are similar to those found in other areas of the country and focused on those considered necessary to receiving quality data without impacting the efficiency of the provider companies operating in the West Coast rationalized groundfish fleet.

Observers would be required to meet the minimum qualification standards currently in use and successfully complete all training. Observers would also be required to collect and submit data as per the protocols of the program. If an observer's performance does not meet the observer program minimum standards outlined in the observer program manuals and other materials, the observer may be decertified and would not be eligible to observe in any West Coast groundfish fishery. If an observer fails to meet performance standards while conducting their responsibilities, NMFS would initiate a proceeding to propose their decertification. As with any proceeding to revoke a certification, NMFS would provide the observer notice and an opportunity to challenge the proposed decertification. NMFS would issue a preliminary decision and, if it is unfavorable to the observer, an appeal process for further review would be provided.

In addition to continuing to deploy observers in the non-rationalized fleet, the WCGOP is reorganizing to meet the new demands of trawl rationalization including training and briefings. To maintain observer deployment flexibility and efficiency, observer training will capitalize on the existing program structure to train and certify qualified observers in the least number of trainings and briefings as possible. Currently, observers are qualified, trained and certified separately for the shorebased fleet and at-sea whiting processing fleet. NMFS envisions continuing to design observer training around similar observer duties and deployment logistics. Thus, in the future coop whiting fleet, observers deployed aboard the motherships and catcher processors would still be required to be certified and in good standing with the North Pacific Groundfish Observer Program (NPGOP) (as data collection, recording and transmission methods are similar) and successfully complete a whiting observer briefing. These existing briefings are expected to incorporate any additional duties aboard motherships and catcher processors due to trawl rationalization. As for observers deploying aboard catcher vessels delivering shoreside or to motherships, a broader training incorporating updated duties or a stand-alone IFQ training or briefing, is being investigated. The current shorebased observer training is 13 days and instruction includes data sampling methodology, data recording, species identification, at-sea safety, *etc.* The Pacific whiting IFQ fishery and mothership catcher vessel coverage that would be required under this proposed rule creates the need to develop and train observers in new methodology not previously included in WCGOP training. Given the number of vessels anticipated to be in the Shorebased IFQ Program, the given staffing and class size restrictions, NMFS is planning on two to three trainings to ensure enough qualified observers are available for the fleet by year end.

Conflict of Interest Regulations in the Observer or Catch Monitor Programs

The proposed regulations, as deemed by the Council, contain language on conflict of interest provisions for observers (§§ 660.140(h)(6)(vii)), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and catch monitors (§ 660.18(c)). However, NMFS has concerns with the language and believes it has the potential to undermine the integrity of the shorebased and at-sea monitoring programs.

The data coming from observers aboard fishing vessels and catch monitors at shorebased first receivers is crucial to NMFS's ability to sustainably manage groundfish in general, and would be particularly important during management of the pending groundfish trawl rationalization program. A crucial component of NMFS's tracking and monitoring system for the trawl rationalization program is the collection of timely and accurate landings and discard data to allow managers to ensure that landings stay within prescribed limits in order to prevent overfishing and promote rebuilding. Such landings and discard data would also provide fishermen with an accurate accounting of their harvesting activities so that they can efficiently plan their fishing operations. Maintaining strict conflict of interest standards for monitors and observers would give managers and fishermen a high level of assurance that they are basing their decisions on accurate data. NMFS believes that the changes proposed by the Council would unacceptably reduce the assurance that NMFS is receiving the best available information from its monitoring programs.

In addition, if the language deemed by the Council were to be implemented, there would be inconsistent conflict of interest requirements within NMFS regulations, both between the regions, and on the West Coast. The conflict of interest requirements that were presented to the Council at its June 2010 meeting (*see http://www.pcouncil.org/wp-content/uploads/B6a_ATT2_DRAFT_PRGRM_COMPONENTS_JUNE2010BB.pdf;* requirements for catch monitors starting on page 9, and for observers on page 41) are consistent with conflict of interest standards set forth in the NMFS policy statement 04–109–01, National Minimum Eligibility Standards for Marine Fisheries Observers, implemented on August 6, 2007. In addition, the provisions proposed by NMFS are consistent with existing requirements in the WCGOP, which will remain in place for the fixed gear and open access fleets. NMFS believes that the changes proposed by the Council would create discrepancies both within the region and nationally, and would place undue administrative burdens on NMFS.

Because of these reasons, NMFS intends to use its authority under section 305(d) of the MSA to publish language in the final rule that differs from what was deemed by the Council. This proposed rule includes both the Council-deemed regulatory language and the language proposed by NMFS. The regulatory language labeled Alternative 1 in the conflict of interest provisions for observers (§§ 660.140(h)(6)(vii)), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and for catch monitors (§ 660.18(c)) is the Council-deemed language, and Alternative 2 is the language NMFS proposes to publish in the final rule.

NMFS specifically requests comment on these conflict of interest provisions for observers and catch monitors, and on NMFS's intent to publish Alternative 2 to make these requirements consistent

within the region and with other NMFS programs.

Ownership Information

Previously, NMFS promulgated rules to determine ownership interests of limited entry trawl permits under the data collection rule (75 FR 4684, January 29, 2010). Information regarding ownership is necessary for NMFS to determine compliance with control limits and accumulation limits in the trawl rationalization program. Based on NMFS's review of the ownership information that it has received, NMFS realizes that additional information may be necessary to make this determination. For instance, while in many cases the owner of the trawl limited entry permit is the same person as the owner of the vessel to which the permit is registered, this does not always appear to be the case. Because control of QS is determined on a case by case basis and extensive control of QP may indicate control of the underlying QS, NMFS needs ownership information related to vessel accounts as well as for the permit owner. The proposed rule would require vessel account owners to submit an ownership identification form in order to collect this information. In the event that the permit owner and vessel owner are the same, there may be some duplication in the requested information, and NMFS is exploring methods to coordinate processes in order to minimize the burden of multiple ownership identification forms.

In some cases, the structure of the ownership interests may raise questions as to how NMFS interprets the ownership interest in order to make its determination. NMFS has identified two such instances: (1) Joint ownership, and (2) ownership by a trust. Each of these situations is addressed in the proposed rule, and NMFS specifically requests comments on the implications of its interpretations of these ownership structures, or of any other ownership structure not previously identified that may raise questions.

A joint ownership situation exists where more than one person claims an interest indivisible from that of another person, such that the total ownership interest is greater than 100 percent. An example of this would be a joint tenancy, a form of property ownership where two parties (often a husband and wife) each own 100 percent, and in the event of death of one of them, the survivor would retain the indivisible 100 percent already owned. In these situations, NMFS would credit each owner with the full percent claimed (*e.g.,* in this example, 100 percent each), even though the sum of all ownership interests would exceed 100 percent. NMFS believes that for some owners, the benefits of joint tenancy may be greater than the parties' concern for accumulation limits, particularly if they are more interested in estate planning than accumulation of privileges, and that if the parties to a joint tenancy don't want to avoid individual accountability for the entire ownership interest, they would have the option of restructuring.

Ownership by a trust creates another area where questions arise regarding compliance with accumulation limits. In any consideration of trusts, there are three parties that need to be considered: the trustee, the beneficiaries, and the trustor. Generally speaking, the trustee manages the property held in the trust according to the terms of the trust document for the benefit of the beneficiaries of the trust. The beneficiaries are equitable owners of the property, but generally, since they are not the legal owners do not exercise control over the property. The trustor is the party that sets up and grants property to the trust. Because a trust vests the legal title to the property in the trustee, under the proposed rule NMFS would credit ownership to the trustee. If there is more than one trustee (*i.e.,* "co-trustees"), NMFS would consider each trustee to have 100 percent ownership of the trust property. NMFS recognizes that whether other parties besides the trustee would be impacted by ownership and control rules depends upon the nature of the trust and how it is set up. For instance, a trustor might retain authority to take the property back from the trust (*i.e.,* a revocable trust), or, in some circumstances, beneficiaries could assert control over the trust property, modify the trust document, and/or wrest the legal ownership away from the trustee. For both of these cases, ownership would not appear to be an issue unless the trustor or beneficiaries gain actual legal ownership of the trust property, however, whether control rules would be implicated is harder to say and would depend upon the trust document. Thus, the program components rule includes provisions that NMFS may ask for additional information it believes to be necessary for its determination.

Monitoring and Enforcement Measures

As is the case for any quota-based program, NMFS would need to be able to accurately monitor the use of QS and accumulation limits. The Council voted to institute a variety of monitoring and enforcement measures. The shorebased monitoring and catch accounting system would be an expansion of the program that has been conducted under exempted fisheries permits for the Pacific whiting shoreside fishery since 1992. The primary tools for monitoring would include: (1) Requiring the use of observers aboard catcher, catcher-processor, and mothership vessels; (2) requiring the use of catch monitors at all first receivers and related processing facilities; (3) requiring the weighing of all catch on NMFS approved scales; (4) requiring that catcher-processors follow specified procedures when handling catch prior to processing; (5) requiring that first receivers participating in the program use electronic fish tickets and related computer software, and adopt and comply with catch monitoring plans for each site. These measures are discussed in more detail below.

Cost Recovery

The agency may collect fees to cover the administrative costs of issuing any permits (one-time fee for initial issuance and annual renewal), QS accounts and vessel accounts (annual), and first receiver site licenses (annual). Amendment 20 provides for the assessment of cost recovery fees up to 3 percent of ex-vessel value, consistent with section 303A(e) of the MSA. Under the MSA (Section 303A(e)(1)(2)) and Public Law 109–479, the Secretary is authorized and shall collect a fee to recover the agency's costs of management, data collection, analysis, and enforcement activities. Cost recovery is not included in this proposed rule, but will be addressed through a future Council action and trailing regulatory amendment.

Status Quo Management of the Trawl Fishery

Under the trawl rationalization program, some status quo management measures would remain in place for the trawl fishery, including the use of trip limits and closed areas. One example of a status quo management measures that would remain in place is the provision at § 660.55 in the initial issuance proposed rule that "no more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat." This issue was specifically addressed by the Council at its April 2010 meeting as a management measure that should remain because of implications for Chinook salmon bycatch.

Many groundfish species would continue to be subject to trip limits under the Shorebased IFQ Program; any IFQ species caught (retained or

discarded) under these trip limits would still be required to be covered by QP. Trip limits would also remain in place for Pacific whiting prior to the primary whiting season (*see* Appendix D, A–1.5, p. D–6), in order to maintain protections for incidentally-caught Chinook salmon. The proposed rule would eliminate trip limits at the close of the primary season, because under an IFQ program, the effective date of the close of the primary whiting season would be the end of the calendar year, and any catch of Pacific whiting would be subject to available whiting QP. Closed areas, including the GCAs and Ocean Salmon Conservation Zone, would also remain in place as a management tool for all trawl programs. One potential concern may be that whiting fishermen could increase targeting of non-whiting stocks, such as yellowtail, that could be caught with midwater trawl gear used in the GCAs as allowed for vessels targeting whiting. The proposed rule would not prohibit this. NMFS believes that it can monitor the fishery, and that the Council can take action if it determines that this possibility presents a concern.

Shorebased IFQ Program

Observers and Catch Monitors

Under the Shorebased IFQ Program, in order to assure that all catch, including discards, would be matched against QP, the Council voted to implement 100 percent at-sea observer coverage for all vessels and 100 percent monitoring of catch by all IFQ first receivers. The proposed rule would require all vessels in the Shorebased IFQ Program to carry observers, and defines prohibited actions and responsibilities of vessels, the responsibilities of companies providing observer services, and observer qualifications and responsibilities. The proposed rule would also require all IFQ first receivers to employ catch monitors, and would establish similar definitions of responsibilities for first receivers, catch monitor providers, and catch monitors.

The qualifications, roles, and responsibilities would differ between observers and catch monitors, therefore, each are addressed in separate areas in the rule. Observers in the WCGOP are highly-trained biologists that work independently aboard vessels in difficult at-sea environments to quantify discards and mortality estimates of certain bycatch species, collect biological samples and monitor for any fishery interactions with marine mammals, sea turtles and seabirds. The WCGOP was developed consistent with guidelines for fishery observer programs developed under the MSA (*see* MSA sec. 403, 16 U.S.C. 1881b; 50 CFR 600.746), and as such, the program components proposed rule would retain the WCGOP's existing general framework and add new components specific to the Shorebased IFQ Program. New provisions would include the collection of accurate estimates of discards of IFQ species that would be used to estimate individual vessels' overall use of QP and the requirement for observer coverage until all IFQ species from the trip are offloaded.

In contrast to observers, catch monitors would be land-based—principally at first receiver facilities—and would confirm that total landings are accurately recorded on fish tickets (landing receipts). A catch monitors' focus would be more akin to an enforcement role than that of a biologist. The shorebased monitoring and catch accounting system in the proposed rule would expand the current program that has been conducted under exempted fisheries permits (EFPs) for the Pacific whiting shoreside fishery since 1992. The new collection of data would cover not only the Pacific whiting shoreside fishery but all groundfish delivered shoreside by vessels participating in the Shorebased IFQ Program.

The proposed rule would adopt similar regulations for catch monitors as for observers, including definitions of prohibited actions that undermine catch monitors, such as harassment, and responsibilities of IFQ first receivers, responsibilities of companies providing catch monitor services, and catch monitor qualifications and responsibilities. The key differences between the observer and the catch monitor programs include physical location, tracking of discards versus landings, and educational requirements. The program components proposed rule would require catch monitors and catch monitor providers to meet the standards outlined in the rule, but for the first year of the trawl rationalization program, to ease the implementation of the catch monitor program and assure that there are enough catch monitors available for the fishery to proceed, NMFS would "grandfather" existing catch monitors and catch monitor providers that have provided services in the EFP fishery.

There are some additions to the catch monitor regulations in this proposed rule that were deemed through the Council deeming process after the June 2010 Council meeting. A summary of these additions to § 660.17 follows: (1) That a qualified catch monitor would be required to have computer skills; (2) that a catch monitor would be required to be certified by NMFS, not have ailments that would prevent them from performing their duties, and to have completed training; (3) that catch monitor providers would be required to provide catch monitors to first receivers pursuant to the terms of their contract; (4) that the catch monitor providers would be required to ensure that catch monitors complete their duties in a timely manner; (5) that the catch monitor providers would be required to provide catch monitors' salaries, benefits, and logistical support; (6) that catch monitor providers would be required to assign catch monitors within specified assignment limitations and workload; (7) that catch monitor providers would be required to maintain communications with catch monitors and the catch monitor program office; (8) details of training, briefing, and debriefing requirements for catch monitors; (9) details on requirements of the catch monitor provider contracts; (10) that catch monitor providers would be required to provide NMFS status reports on catch monitors; (11) that catch monitor providers would be required to replace lost or stolen gear; and (12) that catch monitor providers would be required to ensure that records on individual catch monitor performance remain confidential. These provisions would delineate the respective responsibilities between catch monitors, catch monitor providers, and first receivers and are included to assure the effectiveness of the catch monitor program.

In order to improve efficiency in some ports, the proposed rule anticipates that some observers would also take the role as a catch monitor, provided the qualifications for both would have been met. However, an individual who functions as both would not work more than a maximum number of hours that would negatively affect their safety, health, or job performance. NMFS continues to discuss possible coordination between observer training and catch monitor training programs to gain further efficiencies. In addition, NMFS is examining the Council's request to explore the possibility that State employees may be used as observers or catch monitors, but discussions have not progressed sufficiently to include in this proposed rule.

First Receiver Site License, Catch Monitoring Plan, Electronic Fish Tickets, and Scales

The Shorebased IFQ Program requires that fish harvested in the program be delivered to an IFQ first receiver holding a first receiver site license. Under the program components

proposed rule, for an applicant to obtain a first receiver site license, the applicant would be required to have a NMFS-approved catch monitoring plan that complies with regulatory requirements, have been subject to a site inspection conducted by NMFS staff, be in compliance with equipment requirements (*e.g.,* scales), and report landings through an electronic fish ticket system. Because the rule is not projected to be effective until the end of December 2010, NMFS anticipates that there would not be sufficient time to review all catch monitor plans submitted with first receiver site license applications, nor would there be sufficient time to physically inspect each site prior to the start of the groundfish season on January 1, 2011. Thus, the program components proposed rule includes a provision for an interim first receiver site license that would provide a temporary authorization for first receivers to buy IFQ groundfish while NMFS processes the applications for the first receiver site licenses.

To obtain an interim site license, a first receiver would need to submit an application with a catch monitor plan, and NMFS would issue the interim license. Subsequently, NMFS would review the plan and inspect the site, and if the plan and inspection meets the listed criteria, NMFS would issue a (non-interim) first receiver site license which would supersede the interim license. If the catch monitor plan or inspection does not meet the required standards, the first receiver may attempt to fix the deficiencies and have its application reconsidered by NMFS. The interim license would be effective for a period of up to six months, or until NMFS issues a (non-interim) first receiver site license, whichever comes first. NMFS anticipates that this six month period would be sufficient to process initial applications for first receiver site licenses, and any subsequent applications would be processed as applications are received.

An IFQ first receiver would be required to meet equipment requirements and electronic landing reporting requirements while operating under an interim first receiver license. A first receiver site license applicant would be required to prepare a catch monitoring plan and be subject to on-site verification for compliance. These plans would be subject to approval by NMFS to ensure the plan conforms with program monitoring criteria. The plans would include descriptions of catch-sorting spaces, how first receiver staff would sort catch and prevent unsorted catch from entering areas beyond the sorting space, scales used for weighing and their location, ensure accurate catch weighing, delivery points where catch is removed from vessels, and the catch monitor's observing area sufficient to allow monitoring of the flow of fish. Likewise, a first receiver site license holder would be required to ensure that all catch is landed, sorted, and weighed in accordance with the plan. Should conditions change and the plan require modification, a first receiver would be able to amend the plan.

First receivers would be required to provide complete facility access to NMFS staff, catch monitors, and other authorized persons. Such access is necessary for monitoring and program enforcement. Further, scales to weigh catch would be periodically checked for accuracy and written printouts verifying their accuracy would be required to be provided on a periodic basis.

After catch is weighed by the first receiver, the landing information would be reported on the electronic fish ticket system. The electronic fish ticket system would require a first receiver to have a computer installed with NMFS-specified hardware and software. To facilitate and ensure accurate scales and a reliable electronic fish ticket system, NMFS proposes a number of standards by which the scales and computer and software systems would be operated.

QS Permits, QS Accounts, Vessel Accounts

The initial issuance proposed rule established a QS permit that would be issued to eligible applicants for QS. Under the initial issuance proposed rule, a QS permit would be required for the establishment of a QS account, which would be used for tracking the QS owner's amounts of QS or IBQ for each IFQ species. Also under the proposed initial issuance rule, such QS permits would be required to be renewed annually in order to track ownership of QS and IBQ for compliance with control limits. The program components proposed rule further develops how NMFS would manage QS accounts and QS permit renewals.

The proposed rule would allow QS owners to access their QS accounts electronically, through the use of a unique ID and personal identification number (PIN). Previously, NMFS had drafted language that QS account and vessel account owners would be required to make a request to NMFS in writing in order to designate other people with access to the account. NMFS has decided, however, that in order to reduce the paperwork burden on NMFS and the public, NMFS would issue an ID and PIN to account owners to access their individual QS account or vessel account. If an account owner wants to grant access to their account, the account owner may authorize any individual to access their QS account by providing their unique ID and PIN. NMFS would not manage access to the accounts, and the burden of ensuring the integrity of the account would fall to the account owner. While not in the proposed regulation, if preferable, NMFS could issue access level PINs as well, allowing account owners to grant different levels of account access to other individuals as needed. That is, an account owner could have a PIN that would allow him/her to make a transfer, but another individual may have a different PIN that only allows for read-only access to the account, which may be desirable for a vessel captain to verify QP balances in the vessel account before making a trip, for example.

For the first two years of the program, QS and IBQ would not be transferable, but QS and IBQ pounds would be able to be transferred to vessel accounts. Each year, QS account holders must transfer their associated QP and IBQ pounds to a vessel account by September 1. QP and IBQ pounds, once transferred to a vessel account, would not be able to be transferred back to a QS account, but could be transferred to other vessel accounts.

Annually, NMFS would make allocations of QP and IBQ pounds to QS accounts based on available OYs, the amount of QS or IBQ in the QS account, and the results of any initial issuance appeals processes and/or non-renewed QS permits.

A vessel account would be created by NMFS upon request by the owner of a vessel registered to a valid trawl limited entry permit (other than a C/P-endorsed permit). A vessel account registration would be specific to the vessel and its unique vessel owners. The vessel may be registered with different trawl permits in a given year (one at a time), and the vessel account would cover landings of IFQ species only when the vessel is registered to a trawl limited entry permit. Subject to accumulation limits, vessel accounts would be able to receive QP via transfers from QS accounts or from other vessel accounts. After an IFQ landing by a vessel, the amount of the landing would be initially debited from the vessel account, based on electronic fish ticket submissions by first receivers. However, if the catch monitor estimates were to be higher than that reported by the first receiver, the account would be adjusted to reflect the higher estimate, and both the first receiver and the vessel account holder

would be notified of the discrepancy. When a discrepancy occurs, NMFS would review available information against its quality control procedures. If differences cannot be resolved, the final correction would be based on the final fish ticket estimates developed under the State fish ticket system. The accounts would also be debited by the discard estimates submitted by the observer program. Should the vessel owner dispute the observer estimates, the owner would be able to request the WCGOP to review its processes and make appropriate corrections.

QS permit owners and owners of vessels that land IFQ species would be required to use an online IFQ system to account for and to transfer QS and IBQ, or QP and IBQ pounds. The online IFQ system would grant access to both QS accounts and vessel accounts.

For transfers, each transaction would be subject to accumulation limits. Because of this, both the transferee and the transferor would be required to agree to the transaction online. NMFS would review the proposed transaction, and accept the transaction if accumulation limits would not be exceeded as a result of the transfer, thus allowing the transaction to proceed. NMFS acceptance of the transaction would only relate to compliance with accumulation limits and not control limits, as a determination on compliance with control limits would require more information than that which would be provided in the online IFQ system. Upon acceptance, the online system would send both the transferee and transferor confirmation notices for the transaction. Account holders would be able to use these confirmation notices for purposes of providing documentation to banks or other third parties associated with the transaction. NMFS would also provide a process by which account holders could request a correction of transaction data that were incorrectly recorded by the online IFQ system.

The November 2008 Council motion states that transfers of "QS will be highly divisible and the QP will be transferred in whole pound units (*i.e.,* fractions of a pound may not be transferred)." Appendix D, A–2.2.3(d), p. D–12. While the motion clearly identified the lowest unit for the transfer of QP, the motion did not state what the lowest unit of "highly divisible" QS would be once QS becomes transferable in the third year of the program. NMFS presented this issue to the Council at its June 2010 meeting, and the Council determined that the smallest unit for QS transfers would be one one-thousandth of a percent. Thus, the proposed rule establishes the minimum unit for QS transfer at 0.001 percent.

Under the proposed initial issuance rule, QS permits would be required to be renewed annually. The program components proposed rule adds a renewal requirement for vessel accounts as well. Upon review of ownership information for limited entry permits collected from the data collection rule (75 FR 4684, January 29, 2010), NMFS realized that ownership of limited entry trawl permits alone would be insufficient to administer the Shorebased IFQ Program and that additional information would be needed. In particular, NMFS would need to collect information for the economic data collection program, ownership information to assure compliance with control limits, and general administrative information to keep NMFS' database current. Requiring an annual renewal of vessel accounts would provide NMFS the ability to collect such information at the vessel level, in particular where the permit owner and vessel owner are not the same. In the event that the permit owner and vessel owner are the same, there may be some duplication in the requested information, and NMFS is exploring methods to coordinate processes in order to minimize the burden of multiple renewals. If NMFS does not renew a QS permit or a vessel account after the owner submits the renewal application (*e.g.,* because the renewal is incomplete), this action would be subject to NMFS' permit appeals process.

While the initial issuance proposed rule would establish a QS permit renewal requirement, it did not specify what would happen to the QP that would be derived from the QS associated with the QS permit in the event that the permit owner failed to renew the permit. Allowing a QS permit owner to renew at a later time and delaying the issuance of QP until that time would provide greater flexibility for an individual QS permit owner, but would provide less overall flexibility for the fleet as the QP would not be available for transfer to vessels that seek additional QP. At its June 2010 meeting, the Council determined that for any QS permit that is not timely renewed, the QP that would be derived from the QS associated with the QS permit would be redistributed among all of the QS permit owners that timely renew their permits, in proportion to the amount of QS they each own for each IFQ species. The redistribution of QP would not affect the ownership of QS; the owner of the QS permit that did not timely renew in one year would be able to renew the QS permit in a subsequent year to bring the QS permit current.

Accumulation Limits and "Other Fish"

The accumulation limits on used and unused QP in vessel accounts in the Council motion (Appendix D, Table D–2, p. D–20) erroneously included limits on "other fish," which is not an IFQ species subject to these limits. The initial issuance proposed rule likewise included "other fish" erroneously in the accumulation limits table at § 660.140(e)(4). In this proposed rule, NMFS has removed "other fish" from the accumulation limits table, and intends to make the same change in the final initial issuance rule.

Maximized Retention in the Pacific Whiting IFQ Fishery

Under current practices in the maximized retention Pacific whiting fisheries, some minor amounts of operational discard are allowed. Under trawl rationalization, any minor operational amounts of discard would be estimated by the observer and deducted from allocations. NMFS raised this issue at the Council's March 2010 meeting for the maximized retention fishery in the mothership sector (Agenda Item E.6.b, NMFS Report 1, March 2010, #25). For the Shorebased IFQ Program, however, the Council motion at Appendix D, A–2.3.1, p. D–13 states: "Whiting: Maximized retention vessels: Discarding of fish covered by IFQ or IBQ, and nongroundfish species prohibited." The proposed rule adopts this language at § 660.140(g)(2), which states: "Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species[;]" however, this language is potentially ambiguous in that it refers to maximized retention vessels, but prohibits discarding. NMFS specifically requests public comment on any implications that the prohibition on discarding may have on the prosecution of a maximized retention fishery, and further requests comment on what should constitute discarding under this provision of the Shorebased IFQ Program.

IFQ Program Management Measures

Prohibition on Processing Groundfish in Shorebased IFQ Program

Under the trawl rationalization program, vessels participating in the Shorebased IFQ Program may have more flexibility in when and how they harvest their quota, including fishing

with any legal groundfish gear under the gear switching provisions. Therefore, there may be increased opportunity for processing of groundfish at sea. Under current regulations at § 660.302 (which would remain under the proposed rule at § 660.11), "processing" is defined as "the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done." Current groundfish regulations prohibit the following: (1) Processing sablefish taken at-sea in the limited entry fixed gear primary sablefish fishery from a vessel that does not have a sablefish at-sea processing exemption (§ 660.334(e)); or (2) processing of Pacific whiting except by Pacific whiting shoreside vessels 75 feet in length or less that are allowed to head and gut, remove tails, and freeze whiting (§ 660.373(a)(3)). The current regulations do not include a general prohibition on processing all groundfish at-sea for vessels landing groundfish at shorebased processors. In other words, under current regulations, the non-whiting trawl catcher vessels are not prohibited from processing non-whiting catch.

NMFS brought the prohibitions on processing for limited entry fixed gear sablefish and Pacific whiting shoreside vessels to the Council's attention at its March and April 2010 meetings in regards to implications for the Shorebased IFQ Program. At the Council's April meeting, NMFS provided a document that stated "Because at-sea processing is prohibited for participants of the limited entry primary sablefish fishery and in order to maintain fairness between this fishery and the shorebased IFQ fishery, sablefish processing at-sea will also be prohibited for participants in the shorebased IFQ fishery." (Agenda Item I.1.b, Supplemental NMFS Report 3, April 2010, #5). Extending from that interpretation, and as brought forward in the version of the regulations deemed by the Council at its June 2010 Council meeting, the prohibition was broadened to include processing of all groundfish at sea by vessels in the Shorebased IFQ Program, regardless of the type of gear used, with the following exceptions: (A) A vessel that is 75-ft (23-m) or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, and (B) a vessel that has a sablefish at-sea processing exemption may process sablefish at-sea. The proposed rule would adopt this prohibition at § 660.112(b)(1)(xii).

Weight Limits and Conversions

Groundfish allocations, harvest guidelines, and quotas are expressed in round weight. In cases where fish are landed dressed (headed and gutted, or in the case of Pacific whiting, headed and gutted with tails removed (neither activity is considered processing under the groundfish regulations which prohibit processing at-sea for the shorebased fishery), catch weight conversions are used to determine actual round weight of the harvested fish. To derive the weight of round fish harvested by a vessel that delivers dressed fish, a weight conversion factor is multiplied by the dressed weight.

Due to the increased individual accountability of catch (landings and discards) and the individual allocations of harvest opportunity under the Shorebased IFQ Program, NMFS proposes to revise regulations at § 660.60(h)(5)(ii) to create more consistent use of weight conversion factors coastwide. Currently, some discrepancies exist between the weight conversions used by the States of Washington, Oregon, and California. The use of State weight conversions would remain in place for the limited entry fixed gear and open access fisheries because they would continue to be managed under sector allocations (rather than individual quotas) and would continue to be tracked under the State paper fish ticket system. However, under trawl rationalization, landings of groundfish in the Shorebased IFQ Program would be reported through a Federal electronic fish ticket system in addition to the State paper fish ticket system. A consistent, accurate round weight must be reported on the electronic fish ticket submitted to NMFS, and would be used to determine total catch in the Shorebased IFQ Program.

The use of different weight conversions in the different States for catch estimates under the Shorebased IFQ Program may influence vessels to make deliveries based on conversion factors perceived to be more favorable for a particular species, especially if landing near a State border. Another concern from using different State weight conversions would be discrepancies in reported landings values. NMFS believes that the use of consistent coastwide conversion factors in the Shoreside IFQ Program would provide consistency in catch estimates between States, prevent artificial influences on individual landings choices, and benefit NMFS's ability to track landings values. Thus, NMFS proposes Federal conversion factors for species within the scope of the IFQ program at § 660.60(h)(5)(ii) based on published values.

The new catch weight conversion values for dressed IFQ species proposed by this action were derived from an Alaska Sea Grant College Program publication titled, "Recoveries and Yields from Pacific Fish and Shellfish" (Marine Advisory Bulletin number 37, 2004). For Pacific whiting that has been dressed (headed and gutted) with tails removed, the weight conversion was derived from the value for pollock as published at § 679 for the Alaska groundfish fishery. NMFS informed the Council at its March 2010 meeting of its intent to use published values for these weight conversions, however, NMFS specifically requests public comment on the actual values and implications of the proposed conversion factors.

Area Management

Under the Shorebased IFQ Program, IFQ species would be managed in four distinct geographic areas: U.S./Canada border to ≥ 40°10′; 40°10′ to ≥ 36°; 36° to ≥ 34°27′; 34°27′ to the U.S./Mexico border. These management areas would have different management measures for different species. Many groundfish species would be tracked as either a single species with different QS by area; or as a single species in one area and as a component of a species group in another area (*e.g.,* minor shelf or slope group north or south of 40°10′ N. lat.). For example, yellowtail rockfish is an individual species management unit north of 40°10′, but a member of the minor shelf rockfish species complex south of 40°10′. As another example, QS for sablefish would be issued with area distinctions either north or south of 36° N. lat. As still another example, QS for shortspine thornyhead would be issued with area distinctions either north or south of 34°27′ N. lat.

To address the different management measures in the different areas, the proposed rule would prohibit a vessel from fishing in different areas during the same trip. Because landings in the Shorebased IFQ Program would be a mix of all hauls taken during a single trip, a vessel would be required to fish entirely in one management area during any trip to simplify sorting requirements, at-sea observation, and enforcement of IFQ limits. While this provision would reduce flexibility for a vessel that wishes to fish in more than one area during a trip, this provision would address the catch accounting and enforcement concerns without

increasing costs of the program by overburdening the observer and enforcement programs, and thus would provide the most straightforward and efficient method to track and verify total catch of a vessel's IFQ limits for individual species and rockfish complexes.

Gear Switching Provisions

The proposed initial issuance rule laid out the provisions of the Council motion that would allow IFQ species to be harvested with gear other than trawl gear, also known as "gear switching." The program components proposed rule would set forth details of how such gear switching would be managed by NMFS. Many existing management measures depend upon the gear employed by the vessel, and not by the sector endorsement on the vessel's limited entry permit. For instance, GCAs are specific to whether the vessel employs trawl gear or fixed gear, regardless of whether the permit the vessel is registered to is endorsed for trawl or for fixed gear. In order to account for when a vessel participating in the Shorebased IFQ Program elects to use gear other than trawl gear, the proposed rule would incorporate a new designation in the vessel declaration process that would identify the vessel as "Limited entry groundfish non-trawl, shorebased IFQ."

Under the proposed rule, a vessel would be required to elect gear switching in the declaration before the trip begins, and would not be able to use trawl gear on that trip. Current regulations prohibit a vessel from carrying both trawl gear and non-trawl gear onboard the vessel at the same time. This restriction would continue under the proposed rule, because of the gear-specific management measures in place. If vessels were to be allowed to fish more than one gear on the same trip, it would present significant management difficulties. While vessels fishing in the Shorebased IFQ Program under gear switching would be required to have observer coverage onboard at all times, the observer program is designed to identify species composition in the catch, account for discards and, for some species, mortality estimates; to have the observer account for changes in gear use during the trip would detract from the purposes of the observer program and thus would be impracticable. Alternatively, if a vessel wanted to fish with more than one gear during the same trip, the vessel would need to be accountable to management measures for both gear types, as for instance, being restricted from both fixed gear GCAs and trawl GCAs, a management outcome that would likewise be impracticable. Instead, to reduce the complexity of managing gear switching under the Shorebased IFQ Program, the proposed rule would require that a vessel only fish with trawl gear or non-trawl gear on the same trip.

One issue under consideration with regards to gear switching is how often a fisherman would be able to declare and switch gears. Although the declaration system managed by the NMFS Office of Law Enforcement can manage frequent changes in vessel declarations as would be the case for frequent gear switching, NMFS believes the process must be managed in an orderly fashion so as to not compromise the efficient management of the observer program by the Northwest Fisheries Science Center. NMFS specifically requests comment regarding the impact of any restrictions on changes in declarations on gear switching in the Shorebased IFQ Program.

The proposed rule would establish the new declaration for gear switching as "Limited entry groundfish non-trawl, shorebased IFQ." During the June 2010 Council meeting and at the RDW meetings, some members of the public expressed that the declaration process should be more specific, with separate declarations for pot gear or longline gear as opposed to the more general non-trawl declaration. NMFS has not included more specific declarations for vessels electing to fish in the Shorebased IFQ Program under the gear switching provisions because the management measures for non-trawl gears do not differ such that separate declarations would be of any use. For instance, whether a vessel fishes with pot gear or longline gear, the vessel would be subject to the same GCAs. Furthermore, if the management of the nontrawl gears were to change in the future such that a separate declaration would make sense (*e.g.,* separate GCAs for pot and longline gears), such change would require a change to the regulations and a new declaration category could be added at that time. Because of this, NMFS declines to adopt unnecessary additional declaration categories at this time.

Reallocation

The November 2008 Council motion provided directions for reallocation of QS in response to future management changes or for future allocations of groundfish currently outside the scope of the IFQ program (Appendix D, A–2.1.6, p. D–9). Specific potential changes addressed in the Council motion include changes in overfished status, changes in area management, subdivision of an IFQ species group, or subdivision of an IFQ species group. Changes in area management could entail geographic subdivision of an area for management of an IFQ species, recombination of two or more subdivided areas, or movement of a management boundary line.

The proposed rule sets forth what action NMFS would take in the event of a change in area management or subdivision of a species group. For area subdivision, NMFS would issue QS for each newly created area that is equivalent to the amount that was owned for the area before it was subdivided. When two areas are combined, NMFS would adjust the QS for each area so that the total sums to 100 percent and the QS owner would receive the same amount of QP as if the areas had not been combined. If a management boundary line is moved, NMFS would adjust the QS proportionally so that the QS owner would maintain the same share of the trawl allocation for that species on a coastwise basis. If a species group becomes subdivided, NMFS would issue an amount of QS for the newly created IFQ management unit equal to the amount of QS owned of the species group before subdivision.

With regards to changes in overfished status, the November 2008 Council motion states that "When an overfished species is rebuilt or a species becomes overfished there may be a change in the QS allocation within a sector. When a stock becomes rebuilt, the reallocation will be to facilitate the reestablishment of historic target fishing opportunities. When a stock becomes overfished, QS may be reallocated to maintain target fisheries to the degree possible. That change may be based on a person's holding of QS for target species associated with the rebuilt species or other approaches deemed appropriate by the Council." Appendix D, A–2.1.6, p. D–9. Because any reallocation based on a change in overfished status anticipates future Council action, NMFS does not include this language in this proposed rule, but highlights it as a statement of Council intent.

With regards to future allocations of groundfish outside the scope of the IFQ program, the November 2008 Council motion states "For the 'Other Fish,' category of groundfish, if at some time in the future the Council adds it to the IFQ system, the initial allocation would be determined using the same history criteria as was used for other IFQ species (*i.e.,* 1994–2003 history), unless otherwise specified by a future Council action." *Id.* This, too, anticipates future action by the Council and is thus not

included in this proposed rule, but is highlighted here in the preamble.

IFQ Carryover Provision

The proposed carryover provisions at § 660.140(d)(5) would allow a limited amount of surplus QP and IBQ pounds in a vessel account to be carried over from one year to the next or would allow a deficit in a vessel account in one year to be covered with QP or IBQ pounds from a subsequent year, up to a carryover limit. The carryover limit would be calculated by multiplying the percent allowed for a carryover by the total cumulative amount of QP or IBQ pounds transferred into the vessel account for the year (used and unused), less any transfers of QP or IBQ pounds out of the vessel account and less any prior carryover amounts. The reason that QP or IBQ pounds transferred out of the account would not be included in the calculation is to prevent a carryover from being calculated from the same QP or IBQ pounds in more than one account, which would effectively circumvent the percent determined by the Council for the carryover limit. The reason prior carryover amounts would be excluded from the calculation of the carryover limit is to prevent carryovers from being carried forward more than one year, consistent with the Council motion. The Council determined that the percentage to be used for calculating the carryover limit would be 10 percent, but that if there was any reduction in the OY for an IFQ species, the carryover limit would be reduced proportionately. The Council could revise the percentage used for this calculation in future action.

Under the proposed rule, a surplus up to the carryover limit could be carried over if a vessel account has remaining unused QP for an IFQ species at the end of the year. In the case of a surplus, the carryover limit would be based on the cumulative total QP or IBQ pounds in the account (used and unused, less any transfers out of the account and any prior carryover amounts) for the entire year. Alternatively, a vessel account that incurs a deficit (a negative balance for any IFQ species) that is lower than the carryover limit where the vessel account owner is unable to transfer QP or IBQ pounds into the vessel account to cure the deficit within 30 days, the vessel account owner could cure the deficit by declaring the vessel out of the fishery for the remainder of the year and transferring sufficient QP or IBQ pounds into the vessel account within 30 days of NMFS's issuance of QP and IBQ pounds in the following year. In the case of a deficit, the carryover limit would be based on the cumulative total QP or IBQ pounds in the account (used and unused, less any transfers out of the account and any prior carryover amounts) at the date upon which the deficit was documented. If a vessel declares out of the fishery for the remainder of the year, remaining QP or IBQ pounds in the vessel account (species for which there is no deficit) would still be transferable.

During discussions at the RDW, some commenters expressed concern that the requirement to declare out of the fishery for the remainder of the year in order to invoke the carryover provision for a deficit would be overly restrictive and that, in their view, a vessel that declares out of the IFQ fishery under the carryover provision should be able to declare back into the fishery if able to obtain sufficient QP or IBQ pounds later in the year. Under the proposed rule, a vessel would be able to declare back into the Shorebased IFQ Program if it cures the deficit in the same year in which the deficit occurs, however, if a vessel opts to do so, it would no longer meet the requirements for the carryover provision. Instead, the vessel would be subject to enforcement for a violation of the requirement to cure a deficit within 30 days of the date the deficit is documented. The Council was emphatic on the importance of curing deficits within 30 days, and that the carryover provision was a narrow exception to this requirement. If a vessel were allowed to declare out of the fishery under the carryover provision, and subsequently declare back into the fishery before the end of the year, a vessel could effectively circumvent the requirement to cure a deficit within 30 days. The RDW did not achieve consensus regarding this issue, and it was suggested that if any approach different from that in this proposed rule were considered preferable, the Council could address it in the trailing amendments for the rationalization program. Thus, NMFS specifically highlights this issue to solicit public comment.

At-Sea Sectors

Changes Applicable to All At-Sea Sectors

Coop Permits & Coop Agreements

The proposed rule would require that any coop participating in the MS Coop Program or C/P Coop Program would need to obtain a NMFS-approved coop permit in order to address management at the coop level. A coop permit would formally register the coop and its associated members to harvest and process in the sector. Under the proposed rule, in order to obtain a coop permit, the coop would need to specify a coop manager and submit a coop agreement that would establish the terms and conditions for the coop. These provisions would provide NMFS with a mechanism to track and communicate with the coop. In addition, the coop permit would provide a means to assure accountability at the coop level instead of at the individual level, and would provide NMFS with an avenue to take enforcement or administrative action at the coop level if any of the conditions of the coop permit and its associated coop agreement are not met. Under the proposed rule, the coop permit may be revised by NMFS to reflect changes in the membership or participating vessels and other material changes to the coop.

A coop agreement must be submitted with any application for an MS or C/P coop permit. The coop agreement would establish the terms and conditions for the coop. The MS coop agreement language from the Council motion at Appendix D, B–2.3.3 (e), p. D–31, stated that a coop agreement must include "A list of all vessels, and which must match the amount distributed to individual permit holders by NMFS." Some text was inadvertently removed from an earlier version of this Council motion language. Council staff clarified after the June 30th RDW meeting that the text should read, "A list of all vessels *and permit holders participating in the coop and their share of the allocated catch,* which must match the amount distributed to individual permit owners by NMFS." NMFS requires this missing language because of its need to track vessels participating in the coop for enforcement reasons. Accordingly, this corrected language has been inserted in this proposed rule. The C/P coop agreement language also requires a list of vessels for NMFS' enforcement reasons, but does not specify associated catch allocations because the C/P Coop Program is one voluntary coop that receives the entire C/P sector allocation.

MS coop agreements would also be required to include, "Provisions that prohibit co-op membership by permit holders that have incurred legal sanctions that prevent them from fishing groundfish in the Council region" (Appendix D, B–2.3.3(e)(10), p. D–31). Because MS coops would also be required to represent at least 20 percent of the catch history assignment associated with MS/CV-endorsed limited entry trawl permits, as stated, such provisions could result in a coop failure if a coop member permit incurs a legal sanction, is prohibited membership in the coop, and the coop membership falls below the 20 percent

threshold as a result. Such an outcome could potentially penalize all members of a coop for actions of a single member unrelated to the coop's activity. In this proposed rule, NMFS revised this clause to require of MS coop agreements "Provisions that prohibit member permit owners that have incurred legal sanctions that prevent them from fishing groundfish in the Council region *from fishing in the coop.*" This way, such members would remain coop members, avoiding the risk of triggering a coop failure, but could not fish for the coop. The proposed rule does not include a parallel clause for C/P coop agreements referring to legal sanctions.

The Council motion did not include a C/P coop agreement provision. However, NMFS determined the need for the coop agreement provisions for the same reasons such provisions are required for the MS Coop Program. C/P coop agreement contents would not be directly parallel to the MS coop agreement language because these fisheries are structured differently.

At-Sea Sector Observers

Under the MS Coop Program and the C/P Coop Program, the Council voted to implement 100 percent at-sea observer coverage for all vessels, including processing vessels, in order to assure that all catch, including discards, would be matched against allocations. The proposed rule would require all vessels in the MS Coop or C/P Coop Programs to carry observers, and defines prohibited actions and responsibilities of vessels, the responsibilities of companies providing observer services, and observer qualifications and responsibilities.

As previously described, the WCGOP was developed consistent with guidelines for fishery observer programs developed under the MSA (*see* MSA sec. 403, 16 U.S.C. 1881b; 50 CFR 600.746), and as such, the program components proposed rule would retain the WCGOP's existing general framework and add new components specific to the MS or C/P Coop Programs. New provisions would include mandatory observer coverage, the placement of observers on catcher vessels, and collection of estimates of any operational or other discards.

Observers certified for catcher vessels in the mothership fishery would be trained in the same manner as those trained for the Shorebased IFQ Program because of the similarity of their roles (refer back to Shorebased IFQ Program observer discussion for details applicable to catcher vessel observers). Observers certified for mothership processors or catcher/processors would be trained in the same manner as under the current at-sea observer program.

At-Sea Sector Donation Program

A management measure that may no longer be necessary or may need further revision is the optional "bycatch reduction and full utilization program for at-sea processors" (called bycatch reduction and donation program). The bycatch reduction and donation program was established to allow vessels harvesting unsorted catch to retain and donate amounts of groundfish that were in excess of trip limits. Under trawl rationalization, the at-sea sector regulations may not require vessels to be subject to trip limits for groundfish species other than Pacific whiting outside of the primary whiting season. Therefore, the donation program may no longer be necessary or may require minor adjustments. In this proposed rule, the bycatch reductions and donation program remains as stated in existing regulations. NMFS specifically requests comment on the implications of removing or retaining this program and suggested language revisions.

Other At-Sea Management Measures

Many of the existing Pacific whiting management measures and provisions for bycatch management remain in place under the implementation of the rationalization program. With regards to bycatch, the Council motion states that "[t]he goal of bycatch management is to control the rate and amounts of rockfish and salmon bycatch to ensure that each sector is provided an opportunity to harvest its whiting allocation" (Appendix D, B–1.3, p. D–24). For rockfish, hard caps for widow, canary, darkblotched, and Pacific ocean perch would be subdivided between sectors, and in the MS Coop Program, would be further subdivided between the coop fishery and non-coop fishery, and between the coops in the coop fishery. The motion further states that "[t]he ESA listed salmon bycatch management measures—that is, the 11,000 Chinook threshold, 0.05 rate threshold, and triggered 100 fathom closure—will also continue to be in place." *Id.* The program components proposed rule specifies that these measures would continue to be applicable to the at-sea sector under rationalization.

Existing regulations at § 660.306(f)(8) prohibit sorting or discarding of any portion of the catch taken by a catcher vessel in the mothership sector prior to the catch being received on a mothership, and prior to the observer being provided access to the unsorted catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer. Moreover, § 660.306(i)(2) prohibits all vessels with an observer onboard from interfering with or biasing the observer's sampling procedure, including either mechanically or physically sorting or discarding catch before sampling. These prohibitions were retained in the proposed initial issuance rule, at § 660.112(c)(5) and § 660.112(e)(2), respectively. These existing prohibitions address retention requirements sufficiently in the catcher/processor sector. However, because of the allocations to coops and increased observer coverage, additional provisions have been proposed in the MS Coop Program. In the draft program components rule provided by NMFS to the Council for its review at the June 2010 meeting, NMFS had included language in § 660.150 regarding retention requirements in the MS Coop Program with the understanding that catcher vessels would be able to continue to operate as a maximized retention fishery where vessels transfer all of their catch to the mothership prior to sorting the catch. In this program components proposed rule, NMFS has clarified the retention requirements in the MS Coop Program consistent with Council guidance that a maximized retention fishery would still be allowed to continue, but that discards would need to be accounted for and applied against allocations.

MS Coop Program

The proposed rule provides details of the requirements of the MS Coop Program. Each year, a vessel registered to an MS/CV-endorsed permit would be allowed to fish in the coop or non-coop portion of the MS Coop Program, but not both. As discussed above, the MS Coop Program is a maximized retention fishery. While some minor amounts of operational discards may occur, the intent is that all such discards would be accounted for (estimated by the observer) and deducted from allocations.

Motherships

The proposed rule specifies the participation responsibilities for mothership processors in the MS Coop Program. A mothership would be allowed to receive and process fish provided that it was registered to an MS permit and that it neither fished in the MS sector as a catcher vessel nor fished in the C/P sector as a catcher processor during the same calendar year. An MS permit is a new kind of limited entry permit; however, unlike vessels

registered to other limited entry permits, a mothership would not be required to have a vessel monitoring system (VMS) onboard. VMS provides location data to assure fishing vessel with groundfish conservation areas, and is inapplicable to motherships. As described above, the mothership would need to maintain observer coverage, provide NMFS-approved catch weighing equipment, and ensure that all catch which it receives is accurately weighed in its round form. The mothership would also be required to maintain and submit required records and reports, including: Economic data collection forms, scale test records, and cease fishing reports. A vessel registered to an MS permit would also be required to declare its intent to operate as a mothership in the MS permit renewal process. MS permits would be subject to a usage limit in that no person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. Ownership of an MS permit would be calculated using the individual and collective rule, which means the person would be credited with 100 percent of the processing associated with each permit wholly owned by that person and with an amount of processing equivalent to that person's ownership interest in the permit for each permit partially owned by that person.

Catcher Vessels

A catcher vessel would be eligible to participate in the MS Coop Program provided it is registered to a trawl-endorsed limited entry permit; however, it may only elect to participate in the non-coop fishery in the MS Coop Program if the permit has an MS/CV endorsement. The vessel would not be eligible to participate as a catcher vessel in the MS Coop Program if it operated as a mothership in the MS Coop Program or as a catcher-processor in the C/P Coop Program during the same year. A vessel would also not be allowed to catch more than 30 percent of the Pacific whiting allocation for the mothership sector. As with motherships, catcher vessels would be required to procure observers, and maintain and submit required records and reports such as economic data collection forms and scale test records (if scales are employed). MS/CV-endorsed permits could be combined with another limited entry trawl permit in order to increase the size endorsement, but if combined with another MS/CV-endorsed permit would be subject to accumulation limits restricting ownership of catch history assignment to no more than 20 percent of the MS Coop Program allocation. MS/CV-endorsed permits would be subject to limited entry permit regulations regarding change in ownership, change in vessel registration, and annual renewal.

If the owner of an MS/CV-endorsed permit fails to renew the permit, the catch history assignment for that permit would be assigned to the non-coop fishery in the first year in which this occurs; if not renewed in a second year, the catch history assignment would be redistributed proportionally to all valid MS/CV-endorsed permits. The reason the catch history assignment would be assigned to the non-coop fishery in the first year is to provide sufficient time for the permit owner to appeal the extinguishment of the permit as a result of the permit owner's failure to renew the permit. If the permit owner's appeal were to be successful, the permit owner would be eligible to fish in the non-coop fishery. If the permit owner's appeal does not succeed, the catch history assignment would be redistributed among all other MS/CV-endorsed permits in the following year; NMFS would not redistribute the catch history assignment in the first year because of the timing involved.

Coops

Owners of MS/CV-endorsed limited entry trawl permits would be allowed to form coops, provided the coop meets its own participation requirements and responsibilities. A coop would be required to be a voluntarily formed, legally recognized entity that is owned and operated by and representative of its members, who would need to be the owners of at least 20 percent of all MS/CV-endorsed permits, and would be required to designate a coop manager and obtain an MS coop permit from NMFS. The coop would be responsible for applying for and being registered to an MS coop permit, managing and monitoring transfers of catch allocations between members and with other coops, managing and monitoring harvest activities and enforcing catch limits of the coop members, submitting an annual report and identifying a designated coop manager. The designated coop manager would serve as the contact person for the coop, and would be responsible for the annual distribution of catch and bycatch, oversee transfers, prepare annual reports, and be authorized to receive and respond to any legal process against the coop. The designated coop manager would also be required to notify NMFS if the coop dissolves.

Each year, a coop entity that wishes to participate in the MS Coop Program as a permitted coop would be required to submit a complete application for an MS coop permit, including a coop agreement and any administrative fees and annual reports that may be due. The coop entity would also be required to provide copies of any inter-coop agreement(s) into which the coop has entered at the time of annual application, which must incorporate and honor the provisions of each permitted MS coop. For a coop agreement to be complete, it must be signed by all members of the coop and include all of the information outlined in the regulation. If NMFS does not accept the coop agreement, the application would be returned with a letter explaining why not, the coop entity could resubmit the application after addressing any deficiencies. If NMFS accepts the coop agreement and issues an MS coop permit, the coop agreement would remain in place through the end of the calendar year. If any material changes to the coop agreement were to occur during the year, the designated coop manager would be required to notify NMFS within 7 calendar days and would be required to submit a revised coop agreement within 30 calendar days (a material change would be any change in the required components of the coop agreement). The MS coop permit itself would remain in effect until the coop has reached its Pacific whiting allocation or notifies NMFS that it has ceased fishing for the calendar year, a material change to the coop agreement has occurred and the designated coop manager failed to provide a revised coop agreement to NMFS within 7 calendar days of the material change, or NMFS has determined that a coop failure occurred.

MS Coop Program Allocations

The proposed rule sets forth how sub-allocations in the MS Coop Program would be determined and managed. Catch history assignment associated with each MS/CV-endorsed limited entry trawl permit would be annually allocated to a single permitted MS coop or to the non-coop fishery, and would remain with that coop or non-coop fishery for that year. Each permitted MS coop would be authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each MS/CV-endorsed permit identified in the accepted coop agreement for a given calendar year. Designated coop managers may redistribute Pacific whiting sub-allocations between permitted MS coops

through an inter-coop agreement, but Pacific whiting would not be allowed to be redistributed from a permitted MS coop to the non-coop fishery, nor from the MS Coop Program to either the Shorebased IFQ Program or the C/P Coop Program.

Annual mothership sector allocations of non-whiting groundfish species would be divided between MS coops and the non-coop fishery annually; NMFS would inform each MS coop with the amount of its allocation for such species at the time NMFS issues the MS coop permit. Sub-allocations of non-whiting groundfish species with allocations to permitted MS coops would be in proportion to the Pacific whiting catch history assignments assigned to each permitted MS coop. The annual amount of both whiting and allocated non-whiting groundfish species to the non-coop fishery would likewise be calculated from the sum of the catch history assignments for each MS/CV-endorsed permit in the non-coop fishery plus any permits that did not identify a coop, did not renew or were revoked in the previous year. [**Note:** After any permits that did not renew or were revoked have been through due process, the catch history assignments from those permits would be redistributed pro-rata to all remaining MS/CV-endorsed permits in the second year after revocation or non-renewal. Permits that did not declare into a coop and that do not have an obligation to an MS permit would default to the non-coop fishery due to failure to meet the processor obligation and coop agreement requirements.] Pacific halibut and groundfish species that are not allocated (*e.g.,* those with at-sea sector set-asides and those with no set-asides) would not be divided between MS coops and the non-coop fishery, but would be managed annually.

Under the proposed rule, when a mothership sector allocation is reached or is projected to be reached, fishing would be required to cease and a mothership would be prohibited from receiving further deliveries. Likewise, if a sub-allocation to the non-coop fishery is reached or is projected to be reached, all fishing would be required to cease in the non-coop fishery. In a permitted MS coop, fishing would be required to cease once the annual sub-allocation is reached, unless the coop is operating under an inter-coop agreement. Unused non-whiting allocations that remain after a MS coop ceases fishing could be reapportioned among permitted MS coops and the non-coop fishery in proportion to their sub-allocations, or could be reallocated to the C/P sector if the mothership sector's Pacific whiting allocation is reached or participants in the sector do not intend to harvest the remaining allocation.

Processor Obligations

The proposed rule outlines requirements for owners of MS/CV-endorsed permits to make a preliminary declaration in the annual permit renewal process whether they intend to participate in an MS coop or in the non-coop fishery in the following year. If declaring to fish in an MS coop, the owner of the permit would also be required to designate to which mothership the owner intends to obligate its permit for that year. An MS/CV-endorsed permit owner would be required to indicate its intended processor obligation through the renewal process for that permit, and the actual processor obligation would be required to be disclosed on the MS coop permit application in the following year. A permitted MS coop would be required to honor the processor obligation of each permit with respect to any distribution of Pacific whiting sub-allocation within the coop or between permitted coops through an inter-coop agreement, unless it obtains a mutual agreement with the processor to release the MS/CV-endorsed permit owner's processor obligation and the MS/CV-endorsed permit owner identifies a processor obligation to another MS permit. A vessel registered to an MS/CV-endorsed permit may fish for more than one coop in a year, but can only transfer the catch history assignment associated with its MS/CV-endorsed permit through an inter-coop agreement and deliveries of fish caught under that catch history assignment may only be delivered to another MS permit through a mutual agreement exception.

In developing the regulations for the processor obligation provision, NMFS discovered that there may be some confusion over the extent of the annual obligation of an MS/CV-endorsed permit to a specific processor. The Council motion states that "Each year, a permit will obligate to a processor all of its catch for a coming year[,]" and that "CV(MS) permits will be obligated to a single MS permit for an entire year[.]" (Appendix D, B–2.4, p. D–31). As the motion further describes this obligation, it refers to the obligation as a "linkage" between the MS/CV-endorsed permit and the MS permit, and states that the "CV permit must notify the MS permit that the *CV permit QP* will be linked to." *Id.* at p. D–32 (emphasis added). Because of this language in the Council motion, NMFS believes the nature and extent of the processor obligation is the commitment of the annual catch history assignment associated with the MS/CV-endorsed permit, analogous to QP in the Shorebased IFQ Program. Draft regulations provided to the Council for review as part of the deeming process referred only to the obligation of the MS/CV-endorsed permit to the MS permit, and did not specify the nature or extent of that obligation. Members of the Council's RDW expressed concern that such language could be interpreted to require all deliveries of a vessel registered to the MS/CV-endorsed permit to be delivered to the mothership registered to the MS permit, not just deliveries of the fish associated with the MS/CV-endorsed permit's catch history assignment, and that under such an interpretation, for a vessel to deliver to a processor other than that to which its permit is obligated would require registration of the vessel to another permit or release of the permit through mutual agreement with the processor to which the permit is obligated. For the reasons described above, NMFS does not believe that such an interpretation comports with the intent of the Council motion. Accordingly, NMFS has clarified the regulation to specify that the processor obligation refers only to the commitment of the permit's catch history assignment to a given MS permit, and specifically requests comment on the implications that this interpretation may have on anticipated operations within the MS Coop Program.

There is no processor obligation provision for participants in the non-coop fishery. The version of the regulations provided to the Council at its June 2010 meeting erroneously included a processor obligation for participants in the non-coop fishery. This has been removed from these proposed regulations to conform to the Council motion on the trawl rationalization program.

The Council motion included a clause where a mothership processor may withdraw from the mothership fishery and its obligation to any MS/CV endorsed permits. This provision requires a mothership to notify NMFS and all MS/CV-endorsed permit owners that have declared their obligation to the MS permit registered to that mothership if the mothership is withdrawing from their processor obligation before NMFS assignment of catch history assignments to an individual mothership coop. The Council motion states that this withdrawal could happen "subsequent to quota assignments[.]" (Appendix D, B–2.4.3, p. D–32.) NMFS interprets this to mean subsequent to the declaration of MS/CV-endorsed permit owners' intent

to obligate to particular MS permits during the limited entry permit renewal process up to NMFS's issuance of coop permits in the following year. After NMFS assigns catch history assignments to individual MS coops, MS/CV-endorsed permits would not be able to move between the coop and non-coop fishery within the calendar year, and the Council provided for transfers of allocations in such circumstances through the mutual agreement process described above. Under the MS permit withdrawal provision, if an MS permit were to withdraw from the mothership fishery before the allocations to individual MS coops have been announced by NMFS, any MS/CV endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the owner of each MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for another MS permit.

MS Coop Failure

In the event of a coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history would not be available for harvest by the coop that failed, by any former members of the coop that failed, any other MS coop, or the non-coop fishery for the remainder of that calendar year. The regulations at § 660.150(k) do not reference the non-coop fishery because regulations at § 660.150(c)(2), annual mothership sector sub-allocations, already establishes that allocations could not be redistributed between the coop and non-coop fishery within the calendar year. If allocations were permitted to move to the non-coop fishery within year, it may create incentives for coop failure.

Items Disapproved by NMFS

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21 to the FMP. The proposed rule, which was developed by NMFS and deemed by the Council prior to this partial approval, and contains several provisions in the MS Coop Program that NMFS has subsequently disapproved. NMFS intends to remove these provisions in the final rule. One such provision states: "Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing activities." NMFS disapproved of the requirement to submit agreements to the Council and for public review because not only would it be impracticable given the timing for public review, but also could violate restrictions on the disclosure of confidential information under the MSA. Accordingly, NMFS intends to revise this provision in the final rule to state: "Signed copies of the coop agreement must be submitted to NMFS before the coop is authorized to engage in fishing activities." Another provision would require coops to submit a letter to the Department of Justice requesting a business review letter on the fishery coop, and to submit copies of all such correspondence with an MS coop permit application. NMFS disapproved this provision because compliance with antitrust laws is a separate and distinct obligation of each and every participant and does not need to be a requirement specified in the FMP. Accordingly, NMFS intends to remove this provision entirely in the final rule. Another provision would require coop agreements to include "A requirement that agreement by at least a majority of the members is required to dissolve the coop." NMFS disapproved this provision because it would interfere with private parties' ability to contract and agree to the terms of dissolution that are appropriate for their coop. Accordingly, NMFS intends to remove this provision entirely in the final rule as well.

C/P Coop Program

Under Amendment 20, the C/P Coop Program would formalize in the FMP provisions that support the formation of a single, voluntary coop consisting of all owners of C/P-endorsed permits. Because there could be only one coop, the allocation of Pacific whiting to the C/P Coop Program in a given year would be equal to the entire catcher/processor sector allocation. The annual amount of non-whiting groundfish species with allocations (canary rockfish, darkblotched rockfish, POP, and widow rockfish) would be allocated to the C/P Coop Program in proportion to its allocation of Pacific whiting (*i.e.,* the same percent as the catcher/processor sector whiting allocation). Pacific halibut and groundfish species that are not allocated (*e.g.,* those with at-sea sector set-asides and those with no set-asides) would not be so divided, but would be managed annually.

When the catcher-processor sector whiting allocation is reached or is projected to be reached, fishing within the sector would be required to cease. If the catcher-processor sector's whiting allocation is reached, or if participants in the sector do not intend to harvest the remaining whiting allocation, unused non-whiting allocations that remain after the C/P coop ceases fishing could be reapportioned to the mothership sector.

Because the catcher-processor sector already operates as a voluntary coop under existing regulations, NMFS does not anticipate significant change to its operations. One change that the proposed rule would adopt is the provision that if the voluntary coop were to fail, it would be replaced with an IFQ program, and NMFS would issue IFQ equally to each owner of a C/P-endorsed permit, as specified in the Council motion. Appendix D, B–4, p. D–34. Other changes to the C/P Coop Program are described in sections of this preamble applicable to all fisheries or to at-sea sectors (*e.g.,* EDC program, observer program, coop permits and coop agreements, *etc.*).

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP; a notice of availability for each of these final EISs was published on June 25, 2010 (75 FR 36386).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (*see* **ADDRESSES**) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows:

The Council has prepared two EIS documents: Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of

the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. The two draft EIS's prepared by the Council provide economic analyses of the Council's preferred alternatives and draft RIR and IRFAs. The draft RIR and IRFAs were updated and combined into a single RIR/IRFA for use with the "initial issuance" proposed rule that was published on June 10, 2010 (75 FR 32994). This single RIR/IRFA reviewed and summarized the benefits and costs, and the economic effects of the Council's recommendations as presented in the two EIS's. In addition, the RIR/IRFA contains additional information on characterizing the participants in the fishery and on the tracking and monitoring costs associated with this program.

The RIR/IRFA analyzed the overall program as recommended by the Pacific Fishery Management Council. The analysis encompassed aspects of the initial issuance rule which establishes the allocations set forth under Amendment 21 and procedures for initial issuance of permits, endorsements, quota shares, and catch history assignments under the IFQ and coop programs. It also encompassed this rule —the "program components" rule which provides additional details, including: program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel quota pound accounts, further tracking and monitoring components, and economic data collection requirements. Revenue and landings data in the RIR/IRFA have been updated based on recent analysis by the Council (Appendix F: Historical Landings and Revenue in Groundfish Fisheries; Agenda Item B.3.a, Attachment 3, June 2010). The Council analysis provides revenue trends based on inflation adjusted dollars where estimates are adjusted to current (2009) dollars. The RIR/IRFA was also revised based on comments received on the initial issuance rule and includes a discussion of the other alternatives considered by the Council. This revised RIR/IRFA will also be revised again to address the future "cost-recovery" rule, based on a recommended methodology yet to be developed by the Council. A summary of the revised RIR/IRFA follows.

Although other alternatives were examined, the RIR/IRFA focuses on the two key alternatives—the No-Action Alternative and the Preferred Alternative. The EISs include an economic analysis of the impacts of all the alternatives and the RIR/IRFA incorporates this analysis. For the Amendment 20 EIS, the alternatives ranged from status quo (no action), to IFQ for all trawl sectors, IFQ for the non-whiting sector and coops for all whiting sectors, and IFQ for the shorebased sector and coops for the at-sea sectors (preferred). Various elements were part of each of these alternatives and varied among them, including initial qualifications and allocations, accumulation limits, grandfathering, processor shares, species covered, number of sectors, adaptive management, area management, and carryover provisions. The preferred alternative is a blending of components from the other alternatives analyzed in the EIS. For the Amendment 21 EIS, alternatives were provided for 6 decision points: (1) Limited entry trawl allocations for Amendment 21 species, (2) shoreside trawl sector allocations, (3) trawl sector allocations of trawl-dominant overfished species, (4) at-sea whiting trawl sector set-asides, (5) Pacific halibut total bycatch limits, and (6) formal allocations in the FMP. For most of these decision points, the alternatives within them were crafted around approximately maintaining historical catch levels by the sectors or, in some cases, increasing opportunity for the non-trawl sector.

By focusing on the two key alternatives in the RIR/IRFA (no action and preferred), it encompasses parts of the other alternatives and informs the reader of these proposed regulations. The analysis of the no action alternative describes what is likely to occur in the absence of the proposed action. It provides a benchmark against which the incremental effects of the proposed action can be compared. Under the no action alternative, the current, primary management tool used to control the Pacific coast groundfish trawl catch includes a system of two month cumulative landing limits for most species and season closures for Pacific whiting. This management program would continue under the no action alternative. Only long-term, fixed allocations for Pacific whiting and sablefish north of 36° N. lat. would exist. All other groundfish species would not be formally allocated between the trawl and non-trawl sectors. Allocating the available harvest of groundfish species and species complexes would occur in the Council process of deciding biennial harvest specifications and management measures and, as such, would be considered short term allocations.

The analysis of the preferred alternative describes what is likely to occur as a result of the proposed action. Under the preferred alternative, the existing shore-based whiting and shore-based non-whiting sectors of the Pacific Coast groundfish limited entry trawl fishery would be managed as one sector under a system of IFQs, and the at-sea whiting sectors of the fishery (*i.e.,* catcher-processor sector and mothership sector, which includes motherships and catcher vessels) would be managed under a system of sector-specific harvesting cooperatives (co-ops). The catcher-processor sector would continue to operate under the existing, self-developed co-op program entered into voluntarily by that sector. A distinct set of groundfish species and Pacific halibut would be covered by the rationalization program. Amendment 20 would include a tracking and monitoring program to assure that all catch (including discards) would be documented and matched against QP. The Council specified that observers would be required on all vessels and shore-based monitoring (catch monitors) would be required during all off-loading (100 percent coverage). Compared to status quo monitoring, this would be a monitoring and observer coverage level increase for a large portion of the trawl fleet, particularly for non-whiting shorebased vessels.

The limited entry trawl fishery is divided into two broad sectors: a multi-species trawl fishery, which most often uses bottom trawl gear (hereafter called the non-whiting fishery), and the Pacific whiting fishery, which uses midwater trawl gear. Over the 2005–2009 period, these fisheries when combined have average annual inflation adjusted revenues of about $57 million and total landings of about 215,000 tons. The non-whiting fishery is principally managed through 2-month cumulative landing limits along with closed areas to limit overfished species bycatch. Fishery participants target the range of species described above with the exception of Pacific whiting. By weight, the vast majority of trawl vessel groundfish is caught in the Pacific whiting fishery. In contrast, the non-whiting fishery accounts for the majority of limited entry trawl fishery ex-vessel revenues. On average, for the period 2005–2009, Pacific whiting accounted for about 90 percent of the quantity of groundfish landed in the limited entry trawl fishery, but only 44 percent of the value due to their relatively low ex-vessel price.

Non-whiting trawl vessels deliver their catch to shoreside processors and buyers located along the coasts of Washington, Oregon, and California, and tend to have their homeports located in towns within the same general area where they make deliveries, though there are several cases of vessels delivering to multiple ports during a year. Some Pacific whiting trawl vessels are catcher-processors, which, as their name implies, process their catch on-board, while other vessels in this sector deliver their catch to shoreside processors or motherships that receive Pacific whiting for processing but do not directly harvest the fish.

Over time, landings in the limited entry trawl fishery have fluctuated, especially on a species-specific basis. Pacific whiting has grown in importance, especially in recent years. Through the 1990s, the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2005–2009, estimated Pacific whiting ex-vessel revenues averaged about $25 million (figures have been adjusted to 2009 dollars to account for inflation). In 2008, these participants harvested about 216,000 tons of whiting worth about $51 million in ex-vessel revenues, based on shore-based ex-vessel prices of $235 per ton, the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 214,000 tons worth $29 million at an average ex-vessel price of about $137 per ton while the 2009 non-Tribal fishery harvested about 99,000 tons worth about $12 million at a price of $120 per ton.

While the Pacific whiting fishery has grown in importance in recent years, harvests in the non-whiting component of the limited entry trawl fishery have declined steadily since the 1980s. Non-whiting trawl ex-vessel revenues (adjusted for inflation) in the fishery peaked in the mid 1990s of about $40 million. Following the passage of the Sustainable Fisheries Act (1996) and the listing of several species as overfished, harvests became increasingly restricted and landings and revenues declined steadily until 2002. Over the period 2005 to 2009, inflation adjusted ex-vessel revenues from groundfish in the non-whiting trawl sector have averaged $27 million annually; ranging from $24 million (2005) to $32 million (2008). The 2009 fishery earned $30 million in ex-vessel revenues. Under the trawl rationalization program, shorebased whiting sector will be joined with the shorebased non-whiting sector. For perspective, when these fisheries are combined, their total ex-vessel revenues have averaged about $36 million annually over the last five years.

Expected Effects of Amendment 21—Intersector Allocation

The allocation of harvest opportunity between sectors under the proposed regulation does not differ significantly from the allocation made biennially under the no action alternative. The primary economic effect of the long-term allocation under the proposed regulations is to provide more certainty in future trawl harvest opportunities, which would enable better business planning for participants in the rationalized fishery. As described elsewhere, the trawl rationalization program could create an incentive structure and facilitate more comprehensive monitoring to allow bycatch reduction and effective management of the groundfish fisheries. In support of the trawl rationalization program, the main socioeconomic impact of Amendment 21 allocations is longer term stability for the trawl industry. While the preferred Amendment 21 allocations do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions. The economic effects of Amendment 21 arise from the impacts on current and future harvests. The need to constrain groundfish harvests to address overfishing has had substantial socioeconomic impacts. The groundfish limited entry trawl sector has experienced a large contraction, spurred in part by a partially Federally-subsidized vessel and permit buyback program implemented in 2005. This $46 million buyback program was financed by a Congressional appropriation of $10 million and an industry loan of $36 million. Approximately 240 groundfish, crab, and shrimp permits were retired from State and Federal fisheries, and there was a 35 percent reduction in the groundfish trawl permits. To repay the loan, groundfish, shrimp and crab fisheries are subject to landings fees. Follow-on effects of the buyback have been felt in coastal communities where groundfish trawlers comprise a large portion of the local fleet. As the fleet size shrinks and ex-vessel revenues decline, income and employment in these communities is affected. Fishery-related businesses in the community may cease operations because of lost business. This can affect non-groundfish fishery sectors that also depend on the services provided by these businesses, such as providing ice and buying fish. An objective to the trawl rationalization program is to mitigate some of these effects by increasing revenues and profits within the trawl sector. However, because further fleet consolidation is expected, the resulting benefits are likely to be unevenly distributed among coastal communities. Some communities may see their groundfish trawl fleet shrink further as the remaining vessels concentrate in a few major ports. Species subject to Amendment 21 allocations would be: Lingcod, Pacific cod, sablefish south of 36° N. lat., Pacific ocean perch, widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40°10′ N. lat., shortspine thornyhead (north and south of 34°27′ N. lat.), longspine thornyhead north of 34°27′ N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40°10′ N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and Other Flatfish. While the preferred Amendment 21 allocations of these species do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions.

Based on ex-vessel revenue projections, Table 4–18 (ISA DEIS) shows the potential 2010 yield to trawl and non-trawl (including recreational) sectors under the Amendment 21 alternatives and the potential 2010 value of alternative trawl allocations. Under the status quo option Alternative 1, the projected ex-vessel value of the trawl allocation is $56 million while the projected ex-vessel value of the Council's preferred alternative is $54 million, indicating a potential increase to the non-trawl sectors and a potential decrease to the trawl sector.

In addition to the species above, halibut would also be specifically allocated to the trawl fishery. The proposed regulations include a halibut trawl bycatch reduction program in phases to provide sufficient time to establish a baseline of trawl halibut bycatch and for harvesters to explore methods (*e.g.,* adjustments to time and/or area fished, gear modifications) to reduce halibut bycatch and bycatch mortality. Pacific halibut are currently not allowed to be retained in any U.S. or Canadian trawl fisheries per the policy of the IPHC. The Council's intent on setting a total catch limit of Pacific

halibut in Area 2A trawl fisheries is to limit the bycatch and progressively reduce the bycatch to provide more benefits to directed halibut fisheries. The program establishes a limit for total Pacific halibut bycatch mortality (legal-sized and sublegal fish) through the use of an individual bycatch quota in the trawl fishery. The initial amount for the first two years of the trawl rationalization program would be calculated by taking 15% of the Area 2A Total Constant Exploitation Yield (CEY) as set by the International Pacific Halibut Commission (IPHC) for the previous year, not to exceed 130,000 lbs per year for total mortality. For example, if the trawl rationalization program went into effect in 2013, the trawl halibut IBQ would be set at 15% of the Area 2A CEY adopted for 2012 or 130,000 lbs per year, whichever is less, for 2013 and 2014 (years 1 and 2 of the program). Beginning with the third year of implementation, the maximum amount set aside for the trawl rationalization program would be reduced to 100,000 lbs per year for total mortality. This amount may be adjusted downward through the biennial specifications process for future years.

Currently there are no total catch limits of Pacific halibut specified for the west coast trawl fishery. Trawl bycatch of Pacific halibut, therefore, does not limit the trawl fishery. A phased in, halibut bycatch reduction program, would provide sufficient time to establish a baseline of trawl halibut bycatch under the new rationalization program and for harvesters to explore methods (*e.g.,* adjustments to time and/or area fished, gear modifications) to reduce both halibut bycatch and bycatch mortality. By limiting the bycatch of Pacific halibut in the LE trawl fisheries, Amendment 21 would control bycatch and could provide increased benefits to Washington, Oregon, and California fishermen targeting Pacific halibut. Reducing the trawl limit would also provide more halibut to those who participate in the directed Tribal, commercial and recreational halibut fisheries.

Effects of Amendment 20—Trawl Rationalization

An overall comprehensive model that simultaneously captures changes in fishermen's behavior, changes in the markets, and changes in communities was not feasible because of lack of data and empirical analyses that show needed relationships. Instead, a set of models designed to focus on specific issues was developed. For example, models were used to: Analyze the effects of the initial allocation of QS in the trawl IFQ program; project geographic shifts in fishery patterns; and illustrate the potential for reducing bycatch, increasing target catch, and increasing revenues. To illustrate the benefits of the IFQ program, a model projecting the expected amount of fleet consolidation in the shore-based non-whiting fishery was developed. This model illustrates the potential for the fleet to reduce bycatch and potentially increase the amount of target species harvested. This model is primarily based on bycatch reduction experiences in the Pacific whiting fishery and under an Exempted Fishing Permit carried out in the arrowtooth flounder fishery. The model accounts for the fact that trawlers harvest many species (multiple outputs). The model also uses fish ticket data and the data from the recently completed West Coast Limited Entry Cost Earnings Survey sponsored by the NMFS Northwest Fisheries Science Center. (For the other sectors, similar models could not be developed because the appropriate cost data was unavailable.)

Estimates of potential economic benefits are generated based on the predicted harvesting practices from the first step analysis. Because the west coast nonwhiting groundfish fishery is not a derby fishery, it is expected that economic benefits will come through cost reductions and increased access to target species that arise from modifications in fishing behavior (overfished species avoidance). The key output of this analysis is an estimate of post-rationalization equilibrium harvesting cost.

Changes in harvesting costs can arise from three sources. First, the total fixed costs incurred by the groundfish trawl fleet change as the size of the fleet changes. Since many limited entry trawlers incur annual fixed costs of at least $100,000, reductions in fleet size can result in substantial cost savings. In other words, a fewer number of vessels in the fishery will lead to decreased costs through a decrease in annual fixed costs. Second, costs may change as fishery participation changes and no longer incur diseconomies of scope (such as the costs of frequently switching gear for participating in multiple fisheries). Third, costs may change as vessels are able to buy and sell quota to take advantage of economies of scale and operate at the minimum point on their long-run average cost curve (*i.e.* the strategy that minimizes the cost of harvesting).

The major conclusions of this model suggest that (with landings held at 2004 levels), the current groundfish fleet (non-whiting component) which consisted of 117 vessels in 2004, will be reduced by roughly 50% to 66%, or 40–60 vessels under an IFQ program. The reduction in fleet size implies cost savings of $18–$22 million for the year 2004 (most recent year of the data). Vessels that remain active will, on average, be more cost efficient and will benefit from economies of scale that are currently unexploited under controlled access regulations in the fishery. The cost savings estimates are significant, amounting to approximately half of the costs incurred currently, suggesting that IFQ management may be an attractive option for the Pacific Coast Groundfish Fishery. Assuming a 10% annual return to the vessel capital investment, estimates indicate that the 2004 groundfish fleet incurred a total cost of $39 million. The PacFIN data indicate fleetwide revenue (this includes groundfish, crab, and other species) at roughly $36 million in 2004, and, therefore, fleetwide losses of about $3 million occurred in 2004. Based on a lower 5% return to vessel capital, the results suggest that the groundfish fleet merely broke even in 2004; *i.e.,* dockside revenues were offset by the fleetwide harvesting costs. The results also suggest a switch from the current controlled access management program to IFQs could yield a significant increase in resource rents in the Pacific Coast Groundfish fishery. For instance, the analysis finds that the 2004 groundfish catch generated zero resource rent. Instead, it could have yielded a substantial positive rent at about $14 million.

As the model was based on the 2004 fishery, it may be useful to show current trends in the fishery. In 2004, the shorebased non-whiting trawl fishery generated about $21 million in groundfish ex-vessel revenues (inflation adjusted). But according to cost estimates discussed above, this fishery was at best breaking even or perhaps suffering a loss of up to $2 million. Since 2004, shorebased non-whiting trawl fisheries have increased their revenues to about $30 million. The increase in shorebased revenues have come from increased landings of flatfish and sablefish and significant increase in sablefish ex-vessel prices. Sablefish now accounts for almost 40 percent of the trawl fleet's revenues. While revenues were increasing, so were fuel prices. Fuel costs now account for approximately 30 to 40 percent of the vessels' revenues. The average 2005–2009 revenues were about $27 million, or 29 percent greater than 2004. The average 2005–2009 fuel price was about $2.81 per gallon, 70% greater than that

of 2004. Therefore, it appears that the profitability of the 2009 fishery may not be that much improved over that of 2004.

Ex-vessel revenues for the non-whiting sector of the limited entry trawl fishery are projected to be approximately $30–40 million per year under the preferred alternative, compared to $22–25 million under the no action alternative. These projections yield a potential range in increased revenues of 20 to 80 percent. This revenue increase is expected to occur in a rationalized fishery, because target species quotas can be more fully utilized. Currently, in the non-whiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level by means of IFQs provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunities of others. In addition, under the preferred alternative, the non-whiting sector would have control over harvest timing over the whole calendar year. Nonwhiting harvesters currently operate under 2-month cumulative landing limits, which allow greater flexibility in terms of harvest timing between 2-month periods but less flexibility within periods (because any difference between actual limits and the period limit cannot be carried over to the next period). In contrast, under the IFQ program harvesters will have control over harvest timing over the whole calendar year. However, in terms of any influence on price, this increased flexibility is unlikely to have a noticeable effect. Finally, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish. This opportunity would mainly relate to sablefish, which are caught in deeper water, rather than nearshore species where State level regulatory constraints apply.

Costs for the non-whiting sector of the limited entry trawl fishery are expected to decrease under the preferred alternative because of productivity gains related to fleet consolidation. Productivity gains would be achieved through lower capital requirements and a move to more efficient vessels. Operating costs for the non-whiting sector are predicted to decrease by as much as 60 percent annually. Based on estimates of current costs, this percentage decrease represents a $13.8 million cost reduction relative to the no action alternative.

The accumulation limits considered under the preferred alternative are not expected to introduce cost inefficiencies in the non-whiting sector, provided that current prices and harvest volumes do not decrease. However, the preferred alternative would impose new costs on the non-whiting sector that would not be incurred under the no action alternative. First, a landings fee of up to 3 percent of the ex-vessel value of fish harvested would be assessed under the preferred alternative to recover management costs, such as maintenance of the system of QS accounts. Second, new at-sea observer requirements would be introduced, and vessels would have to pay the costs of complying with these requirements, estimated at $500 a day if independent contractors are hired. The daily observer cost could place a disproportionate adverse economic burden on small businesses because such costs would comprise a larger portion of small vessels costs than that of larger vessels.

The increase in profits that commercial harvesters are expected to experience under the preferred alternative may render them better able to sustain the costs of complying with the new reporting and monitoring requirements. The improved harvesting cost efficiency under the preferred alternative may allow the non-whiting sector to realize profits of $14–23 million compared to $0 or less under the no action alternative. In addition, a provision that allows vessels managed under the IFQ program to use other legal gear (gear switching) would allow sablefish allocated to the trawl sector to be sold at a higher price per pound, possibly contributing to increased profits. The imposition of accumulation limits could reduce the expected increase in the profitability of the non-whiting sector by restricting the amount of expected cost savings, and the costs of at-sea observers may reduce profits by about $2.2 million, depending on the fee structure. However, the profits earned by the non-whiting sector would still be substantially higher under the preferred alternative than under the no action alternative.

New entrants are likely to face a barrier to entry in the Pacific Coast groundfish limited entry trawl fishery in the form of the cost of acquiring QS (or a co-op share in the case of the at-sea whiting sector). This disadvantages them in comparison to those entities that receive an initial allocation of harvest privileges. Small entities may be particularly disadvantaged to the degree that they may find it more difficult to finance such quota purchases. Among the goals the Council identified for the adaptive management program was to use the reserved non-whiting QS to facilitate new entry into the fishery. In addition, the Council identified, as a trailing action, a framework to allow the establishment and implementation of Community Fishing Associations as part of the adaptive management program. These entities could facilitate entry into the fishery by leasing QS at below market rates, thereby leveling the playing field in terms of costs between initial recipients of QS and new entrants.

The incremental effects of the preferred alternative on buyers and processors of trawl caught groundfish are detailed Sections 4.9–4.10 of the Rationalization of the Amendment 20 Pacific Coast Groundfish Limited Entry Trawl Fishery DEIS. Even though processors may have to pay fishermen higher ex-vessel prices, processors may see cost savings under the preferred alternative to the degree that rationalization allows greater processors and fishermen greater ability to plan the timing, location, and species mix of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation in the non-whiting sector could also provide cost savings for processors if landings occur in fewer locations, thereby reducing the need for facilities and/or transport. The preferred alternative would also impose new costs on processors that would not be incurred under the no action alternative. Processors would be required to pay some or all of the costs of plant monitors, who would verify landings. Similar to at-sea observers, these monitors would be independent contractors rather than direct employees of the processing firm.

In the non-whiting processing industry, harvest volumes may increase because of a decrease in constraining species bycatch and a subsequent increase in under-utilized target species catch. This boost in target species catch may increase utilization of processing capital and processing activity. (It should be noted that if under the current system bycatch has been underreported, with 100 percent observer coverage under the new system, the gains in increased target catches may be less than expected.) Consequently, the possibility of capital consolidation in the non-whiting shorebased sector may be less than in the shore-based whiting sector.

However, shifts in the distribution of landings across ports as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors) could lead to consolidation in processing activity at a localized or regional scale and an expansion in processing activity elsewhere. To mitigate harm to adversely impacted non-whiting shoreside processors, the adaptive management program provides a mechanism to distribute non-whiting QS to processors, thereby ensuring that some processors receive greater landings of groundfish than would otherwise be the case.

As noted above, the preferred alternative may reduce the power of non-whiting shoreside processors to negotiate ex-vessel prices with harvesters. The larger harvest volume due to bycatch avoidance may lower processor average costs, which could offset the negative effects on non-whiting shoreside processors of a shift in bargaining power. In addition, QS could be purchased by processors over the long term, thereby increasing processors' negotiation power. However, the accumulation limits included in the preferred alternative would limit the ability of processors to purchase substantial quantities of QS. Alternatively, the adaptive management provision could be used to allocate QS to non-whiting shoreside processors, thereby providing them additional leverage when negotiating terms with harvesters.

The allocation of 20 percent of the initial shore-based whiting QS to the shoreside processor portion of the groundfish fishery would give these processors more influence in negotiations over ex-vessel prices and would tend to offset the gains in bargaining power for harvesters. For example, a processor could use QS to induce a harvester that is short of quota pounds for a Pacific whiting trip to make deliveries under specified conditions and prices. However, because of a reduction in peak harvest volume, fewer processing companies and/or facilities may be necessary to handle harvest volumes of Pacific whiting, meaning some companies may find themselves without enough product to continue justifying processing operations of Pacific whiting. Revenues from harvesting and processing trawl-caught groundfish are expected to increase. Revenues in the non-whiting trawl sector are projected to increase by 20 to 80 percent in a rationalized fishery, depending on bycatch rate reductions and stock status. Revenue increases are mainly expected because under rationalized fisheries, target species quotas can be more fully utilized. Currently, in the nonwhiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunity of others. Whiting fisheries are more directly managed through quotas, and in recent years, by limits on bycatch. Beginning in 2009, bycatch limits have been established for each of the three whiting sectors. For the shore-based and mothership whiting sectors, the fishery can potentially close before the whiting allocation is fully harvested because a bycatch cap is reached. (The catcher-processor sector currently operates as a voluntary co-op and is therefore better able to coordinate harvest strategy to avoid reaching bycatch limits.) However, in general, the whiting sectors have been able to harvest their sector allocations. Whiting vessels could increase revenues due to improved product recovery as a result of the ability to better control harvest timing. As mentioned above, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish.

Harvester and possibly processor costs are expected to decrease because of productivity gains related to fleet consolidation. Cost savings would be due to lower capital requirements and a move to more efficient vessels in the nonwhiting sector. Costs are predicted to decrease by as much as 60 percent annually, which based on estimates of current operating costs would represent a $13.8 million decrease. Similar levels of consolidation are expected for shorebased and mothership catcher vessels. Proposed mitigation measures could reduce these costs savings. For example, a 1 percent quota share accumulation limit could reduce cost savings by as much as 20 percent. But the accumulation limits considered in the alternatives are not expected to introduce higher costs at current prices and harvest volume. The proposed action would introduce some new costs. First, up to 3 percent of the value of landings may be assessed to cover administrative and management costs. Second, new at-sea observer requirements would be introduced and vessels would have to pay the cost, estimated at $350–$500 a day.

Processors may see cost-savings to the degree that rationalization allows greater control over the timing and location of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation could also drive some cost savings on the part of processors if landings occur in fewer locations. This would reduce the need for facilities and/or transport. Under the proposed action, processors would be required to pay the costs of plant monitors, who would verify landings. These monitors would not be directly employed by the processing firm but, similar to at-sea observers, be independent contractors.

Rationalization of the groundfish trawl sector is expected to free up capital and labor because of increases in productivity. (Since the basic input, trawl-caught fish, is subject to an underlying constraint due to biological productivity, increases in labor and capital productivity are expected to reduce the amount of those inputs needed.) However, from a national net benefit perspective these effects are neutral since capital and labor can be put to some productive use elsewhere in the broader economy. Also, current groundfish fishery participants that receive QS (trawl limited entry trawl permit holders and eligible shoreside processors) are compensated to the degree that the asset value of the QS covers capital losses.

It was noted in the RIR/IRFA associated with the initial issuance rule that tracking and monitoring costs of this program will be provided in more detail with this rule. The program details associated with this rule do not change; however, the RIR/IRFA now presents an explicit range of costs based on different daily observer cost rates. What follows is a summary of those estimates—these estimates are focused on the shorebased non-whiting fishery so that it is compared to the results of the NWFSC economic model of this fishery. After a transition period, for the shore-based fishery, the initial estimates of the annual Federal and State agency costs to run this program are about $5 million; and after the transition period, these costs could fall to $4.0 million. Based on the observer cost of $500 per day, the annual costs to the vessel of observer monitoring is about $4 million. Based on $350 per day, the annual costs

of compliance monitors is just over $1 million. These figures add up to about $10 million. From a cost-benefit viewpoint, if consolidation leads to $14 million savings from reduced harvesting costs and the new program increases the tracking and monitoring costs of $10 million, there is a projected net gain of about $4 million. These estimates do not take into account expectations that agency, observer and compliance costs are likely to be reduced due to consolidation or the expected increases in revenues discussed above. Better planning by the industry and companies that provide the observers and compliance monitors should further reduce costs. Recent analyses developed for the North Pacific Council and for the New England Council were reviewed. The New England analysis includes observer cost estimates associated with the Canadian Pacific Groundfish fishery. Based on a review of these analyses, a daily observer rate of $350 a day is feasible. If so, the annual shoreside non-whiting costs of observers and catch monitors will add up to about $3.5 million.

In contrast to the shoreside non-whiting fishery, the effect of the preferred alternative on revenues and costs in the whiting sector of the limited entry trawl fishery can only be discussed qualitatively, as there is no economic model because of lack of cost data. The lower motivation to "race for fish" due to coop harvest privileges is expected to result in improved product quality, slower-paced harvest activity, increased yield (which should increase exvessel prices), and enhanced flexibility and ability for business planning. The overall effect of these changes would be higher revenues and profits for harvesters in the shoreside and mothership portions of the whiting fishery in comparison to the no action alternative. Under the preferred alternative, some consolidation may occur in the shoreside and mothership sectors of the Pacific whiting fishery, though the magnitude of consolidation is expected to be less than in the non-whiting sector. The existing catcher-processor coop would continue under the preferred alternative, with effects on the catcher-processor sector that look similar, or identical, to those of the no action alternative. However, the change from a vessel-based limit under Amendment 15 to the permit-based limit of Amendment 21 will provide additional flexibility that currently does not exist in the catcher-processor fishery. Using estimates of $350 per day for observers and compliance monitors, the total annual costs of observers and catch monitors for the whiting sector (shoreside harvesters, processors, mothership processors, mothership catcher vessels, and catcher-processors) is about $1.5 million. Additional agency costs associated with managing these whiting fisheries are included in the estimates provided in the above discussion on shore-based non-whiting costs.

This proposed rule would regulate businesses that harvest groundfish and processors that wish to process limited entry trawl groundfish. Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. For small businesses, the SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $7.0 million. The RFA defines a small organization as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and Tribal fleets, and available industry responses industry to on-going survey on ownership. Entities were analyzed as to whether they were only affected by the Amendment 21 allocation processes (non-trawl), or if they were affected by both Amendment 20 and 21 (trawl).

The non-trawl businesses are associated with the following fleets: limited entry fixed gear (approximately 150 companies), open access groundfish (1,100), charterboats (465), and the Tribal fleet (four Tribes with 66 vessels). Available information on average revenue per vessel suggests that all the entities in this group can be considered small.

For the trawl sector, there are 177 permit holders. Nine limited entry trawl permits are associated with the catcher-processing vessels which are considered "large" companies. Of the remaining 168 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a "large" shore-based processing company or with a non-profit organization who considers itself a "large" organization. Nine other permit owners indicated that they were large "companies." Almost all of these companies are associated with the shorebased and mothership whiting fisheries. The remaining 134 limited entry trawl permits are projected to be held by "small" companies. Three of the six mothership processors are "large" companies. Within the 14 shorebased whiting first receivers/processors, there are four "large" companies. Including the shorebased whiting first receivers, in 2008, there were 75 first receivers that purchased limited entry trawl groundfish. There were 36 small purchasers (less than $150,000); 26 medium purchasers (purchases greater than $150,000 but less than $1,000,000); and 13 large purchasers (purchases greater than $1.0 million). Because of the costs of obtaining a "processor site license", procuring and scheduling a catch monitor, and installing and using the electronic fish ticket software, these "small" purchasers will likely opt out of buying groundfish, or make arrangements to purchase fish from another company that has obtained a processing site license.

The major impacts of this rule appear to be on three groups: Shoreside processors which are a mix of large and small processors; and shore-based trawlers which are also a mix of large and small companies. The non-whiting shore-based trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but only with a reduction of about 60 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that

participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against the negative impacts of this program, the Council has adopted an Adaptive Management Program where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs. After reviewing the initial effects of ITQ programs in other parts of the world, the council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be established to help aid communities and fishermen.

A summary of the proposed action is as follows. The proposed action is to replace the current, primary management tool used to control the West Coast groundfish trawl catch—a system of 2-month cumulative landing limits for most species and season closures for whiting—with a system requiring more individual accountability by the assignment of limited access privileges (LAPs). LAPs are a form of output control whereby an individual fisherman, community, or other entity is granted the privilege to catch a specified portion of the total allowable catch (TAC). The alternatives include (1) a catch-based IFQ system where all groundfish catch (landings plus bycatch) by LE trawl vessels would count against a vessel's IFQ holdings, which could be applied to the whole groundfish trawl fishery or selected trawl sectors; and (2) a system of coops that would be applied to one or more of the fishery sectors that target Pacific whiting. The status quo alternative (no action) could also be considered for application to one or more trawl fishery sectors even if one or both action alternatives (IFQs or coops) are chosen for the other trawl sectors.

The description of purpose and need in section 1.2 of the Amendment 20 DEIS also outlines the objectives of the proposed action. The introductory paragraph in Chapter 1 and section 1.3 of the DEIS, background to the purpose and need, provide information on the legal basis for the proposed action (proposed rule). The Council articulated the following goal for the trawl rationalization program: "Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch." The objectives supporting this goal are: Provide a mechanism for total catch accounting; provide for a viable, profitable, and efficient groundfish fishery; promote practices that reduce bycatch and discard mortality, and minimize ecological impacts; increase operational flexibility; minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical; promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry; provide quality product for the consumer; and increase safety in the fishery.

As part of the proposed action, NMFS would place observers and/or cameras on board all catcher vessels in the shore-based sector (which combines the current shore-based whiting and non-whiting trawl sectors). Existing requirements for motherships, catcher vessels in the MS sector, and C/Ps would continue. Independently contracted processing plant monitors would track landings. Also, there would be new reporting requirements related to the tracking of QS and QP in the shore-based fishery.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the Economic Data Collection survey is estimated to average 8 hours per response (268 responses). Public reporting burden for QS Permit Renewal Application is estimated to average 0.33 hour per response (120 responses), First Receiver Site License Initial Issuance/Renewal Application is estimated to average 0.5 hour per response (80 responses), MS Renewal Application is estimated to average 0.33 hour per response (6 responses), MS Transfer Application is estimated to average 0.5 hour per response (3 responses) C/P Coop Permit Transfer Application is estimated to average 3 hours per response (1 response), MS Coop Permit Application is estimated to average 3 hours per response (1 response), Change in vessel fishing for coop form is estimated to average 0.33 hours per response (3 responses), Material Change form is estimated to average 2 hours per response (3 responses), MS Withdrawal/Mutual Exception form is estimated to average 2 hours per response (2 responses), Ownership Interest Form Renewal is estimated to average 0.5 hour per response (156 responses), Ownership Interest Form Transfer, is estimated to average 0.5 hour per response (20 responses), Vessel Account Registration (Initial) is estimated to average 0.5 hour per response (120 responses), Vessel Account Registration (ongoing) is estimated to average 0.5 hour per response (10 responses), Vessel Account Renewal (annual), is estimated to average 0.33 hour per response (30 responses), QS Account Registration is estimated to average 1 hour per response (1 response), QS/QP transfer from QS account to vessel account is estimated to average 0.25 hour per response (180 responses), QP Transfer from vessel account to vessel account is estimated to average 0.25 hour per response (600 responses), Transaction Dispute Request is estimated to average 1 hour per response (10 responses). Public reporting burden for the catch monitor providers, Application preparation & submission is estimated to average 10 hours per response (3 responses), Training registration is estimated to average 1 hour per response (3 responses), Exit Interview registration is estimated to average 10 minutes per response (3 responses), Appeals—written response & submission is estimated to average 4 hours per response (1 response). Public reporting burden for the catch monitors application appeals—written response & submission is estimated to average 4 hours per response (5 responses). Public reporting burden for the catch monitoring plans, Preparation & submission is estimated to average 4 hours per response (80 responses), Inspection, is estimated to average 2 hours per response (80 responses), inseason scale testing is estimated to average 1 hour per response (80 responses), reports are estimated to

average 10 minutes per response (2400 responses). Public reporting burden for electronic fish tickets are estimated to average 10 minutes per response (400 responses). Public reporting burden for the changes to the declaration reporting system and the changes to the observer program are not expected to change the public reporting burden. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region, at the **ADDRESSES** section above; e-mail to *David_Rostker@omb.eop.gov;* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) and the southern DPS of Pacific eulachon (75 FR 13012, March 18, 2010) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

This proposed rule was developed after meaningful consultation and collaboration with the Tribal representative on the Council who has agreed with the provisions that apply to Tribal vessels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: August 20, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Chapter VI, as proposed to be amended at 75 FR 32994, June 10, 2010, is further proposed to be amended as follows:

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

2. In § 660.11, the definitions for "processing or to process" and "processor" are revised to read as follows:

§ 660.11 General definitions.

* * * * *

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or

rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done. (*Also see* an exception to certain requirements at § 660.131(a), subpart D pertaining to Pacific whiting shoreside vessels 75-ft (23-m) or less LOA that, in addition to heading and gutting, remove the tails and freeze catch at sea.)

(1) At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shore-based or on the water.

(2) Shorebased processing or processing means processing that takes place at a facility that is permanently fixed to land. (*Also see* the definition for shoreside processing at § 660.140, subpart D which defines shoreside processing for the purposes of qualifying for a Shorebased IFQ Program QS permit.) For the purposes of economic data collection in the Shorebased IFQ Program, shorebased processing means either of the following:

(i) Any activity that takes place shoreside; and that involves: Cutting groundfish into smaller portions; or freezing, cooking, smoking, drying groundfish; or packaging that groundfish for resale into 100 pound units or smaller; for sale or distribution into a wholesale or retail market.

(ii) The purchase and redistribution in to a wholesale or retail market of live groundfish from a harvesting vessel.

Processor means a person, vessel, or facility that engages in commercial processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing. (*Also see* the definition for processors at § 660.140, subpart D which defines processor for the purposes of qualifying for initial issuance of QS in the Shorebased IFQ Program.)

(1) For the purposes of economic data collection in the Shorebased IFQ Program, shorebased processor means a person that engages in commercial processing, that is an operation working on U.S. soil or permanently fixed to land, that takes delivery of fish that has not been subject to at-sea processing or shorebased processing; and that thereafter engages that particular fish in shorebased processing; and excludes retailers, such as grocery stores and markets, which receive whole or headed and gutted fish that are then filleted and packaged for retail sale. At § 660.114(b), trawl fishery—economic data collection program, the definition of processor is further refined to describe which shorebased processors are required to submit their economic data collection forms.

(2) [Reserved]

* * * * *

3. In § 660.12, paragraph (e)(7) and (e)(8) are revised, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(e) * * *

(7) Fail to provide departure or cease fishing reports specified at §§ 660.140, 660.150, 660.160, subpart D; § 660.216, subpart E; or § 660.316, subpart F.

(8) Fail to meet the vessel responsibilities specified at §§ 660.140, 660.150, 660.160, subpart D; § 660.216, subpart E; or § 660.316, subpart F.

(f) *Groundfish catch monitor program.* (1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with a catch monitor.

(2) Interfere with or bias the monitoring procedure employed by a catch monitor, including either mechanically or manually sorting or discarding catch before its monitored.

(3) Tamper with, destroy, or discard a catch monitor's collected samples, equipment, records, photographic film, papers, or personal effects.

(4) Harass a catch monitor by conduct that:

(i) Has sexual connotations,

(ii) Has the purpose or effect of interfering with the catch monitor's work performance, and/or

(iii) Otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Receive, purchase, or take custody, control, or possession of a delivery without catch monitor coverage when such coverage is required under § 660.140, subpart D.

(6) Fail to allow the catch monitor unobstructed access to catch sorting, processing, catch counting, catch weighing, or electronic or paper fish tickets.

(7) Fail to provide reasonable assistance to the catch monitor.

(8) Require, pressure, coerce, or threaten a catch monitor to perform duties normally performed by employees of the first receiver, including, but not limited to duties associated with the receiving of landing, processing of fish, sorting of catch, or the storage of the finished product.

* * * * *

4. In § 660.13, paragraph (d)(5)(iv) introductory text, paragraph (d)(5)(iv)(A) introductory text, and paragraphs (d)(5)(iv)(A)(*1*) through (*4*), and (*6*) through (*8*) are revised to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(5) * * *

(iv) Declaration reports will include: the vessel name and/or identification number, and gear type (as defined in paragraph (d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using nontrawl gear may declare more than one gear type with the exception of vessels participating in the Shorebased IFQ Program (*i.e.* gear switching), however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare nontrawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types or sectors must be declared:

(*1*) Limited entry fixed gear, not including shorebased IFQ fishery,

(*2*) Limited entry groundfish non-trawl, shorebased IFQ,

(*3*) Limited entry midwater trawl, non-whiting shorebased IFQ,

(*4*) Limited entry midwater trawl, Pacific whiting shorebased IFQ,

* * * * *

(*6*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership),

(*7*) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl,

(*8*) Limited entry demersal trawl, shorebased IFQ,

* * * * *

5. In § 660.14, paragraph (b)(1) is revised to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(b) * * *

(1) Any vessel registered for use with a limited entry "A" endorsed permit (*i.e.,* not a MS permit) that fishes in State or Federal waters seaward of the

baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

* * * * *

6. Section 660.15 is revised to read as follows:

§ 660.15 Equipment requirements.

(a) *Applicability.* This section contains the equipment and operational requirements for scales used to weigh catch at sea, scales used to weigh catch at IFQ first receivers, computer hardware for electronic fish ticket software, and computer hardware for electronic logbook software. Unless otherwise specified by regulation, the operator or manager must retain, for 3 years, a copy of all records described in this section and make available the records upon request of NMFS staff or authorized officer.

(b) *Scales used to weigh catch at sea—performance and technical requirements.* (1) *Scales approved by NMFS for MS and C/P Coop Programs.* A scale used to weigh catch in the MS and C/P Coop Programs must meet the type evaluation and initial inspection requirements set forth in 50 CFR 679.28(b)(1) and (2), and must be approved by NMFS.

(2) *Annual inspection.* Once a scale is installed on a vessel and approved by NMFS for use, it must be inspected annually as described in 50 CFR 679.28(b).

(3) *Daily testing.* Each scale must be tested daily and meet the maximum permissible error (MPE) requirements described at described at paragraph (b)(4) of this section.

(4) *At-sea scale tests.* To verify that the scale meets the maximum permissible errors (MPEs) specified in this paragraph, the vessel operator must ensure that vessel crew test each scale used to weigh catch at least one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) *Belt scales.* The MPE for the daily at-sea scale test is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of fish or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the fish or test material must be determined by weighing it on a platform scale approved for use under 50 CFR 679.28 (b)(7).

(ii) *Platform scales used for observer sampling on MSs and C/Ps.* A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent.

(iii) *Approved test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(iv) *Requirements for all at-sea scale tests.* The vessel operator must ensure that vessel crew:

(A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

(*1*) Vessel name;

(*2*) Month, day, and year of test;

(*3*) Time test started to the nearest minute;

(*4*) Known weight of test weights;

(*5*) Weight of test weights recorded by scale;

(*6*) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and

(*7*) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or authorized officers. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. Each scale test report form must be signed by the vessel operator immediately following completion of each scale test.

(5) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(6) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided to NMFS as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made, and be made available to NMFS staff or authorized officers. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, slime, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal vessel permit number;

(B) The date and time the information was printed;

(C) The haul number;

(D) The total weight of the haul; and

(E) The total cumulative weight of all fish and other material weighed on the scale since the last annual inspection.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR part 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other authorized officer.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record.

(c) *Scales used to weigh catch at IFQ first receivers—performance and technical requirements.* Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is located, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh catch that are also required to be approved by the State must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid sticker indicating that the scale is currently approved in accordance with the laws of the State where the scale is located.

(2) *Visibility.* NMFS staff, NMFS-authorized personnel, or authorized officers must be allowed to observe the weighing of catch on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An IFQ first receiver must ensure that printouts of the scale weight of each delivery or

offload are made available to NMFS staff, to NMFS-authorized personnel, or to authorized officers at the time printouts are generated. An IFQ first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by NMFS staff, NMFS-authorized personnel, or authorized officers for 3 years after the end of the fishing year during which the printout was made.

(ii) All scales identified in a catch monitoring plan (*see* § 660.140(f)(3), subpart D) must produce a printed record for each delivery, or portion of a delivery, weighed on that scale, unless specifically exempted by NMFS. NMFS may exempt, as part of the NMFS-accepted catch monitoring plan, scales not designed for automatic bulk weighing from part or all of the printed record requirements. For scales that must produce a printed record, the printed record must include:

(A) The IFQ first receiver's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each landing, or portion of the landing that was weighed on that scale;

(D) The date the information is printed; and

(E) The name and vessel registration or documentation number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of printing.

(4) *Inseason scale testing.* IFQ first receivers must allow, and provide reasonable assistance to NMFS staff, NMFS-authorized personnel, and authorized officers to test scales used to weigh IFQ catch. A scale that does not pass an inseason test may not be used to weigh IFQ catch until the scale passes an inseason test or is approved for continued use by the weights and measures authorities of the State in which the scale is located.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or authorized officers must be able to verify that:

(A) The scale display and printed information are clear and easily read under all conditions of normal operation;

(B) Weight values are visible on the display until the value is printed;

(C) The scale does not exceed the maximum permissible errors specified in the following table:

Test load in scale divisions	Maximum error in scale divisions
(*1*) 0–500	1
(*2*) 501–2,000	2
(*3*) 2,001–4,000	3
(*4*) >4,000	4

(D) *Automatic weighing systems.* An automatic weighing system must be provided and operational that will prevent fish from passing over the scale or entering any weighing hopper unless the following criteria are met:

(*1*) No catch may enter or leave a weighing hopper until the weighing cycle is complete;

(*2*) No product may be cycled and weighed if the weight recording element is not operational; and

(*3*) No product may enter a weighing hopper until the prior weighing cycle has been completed and the scale indicator has returned to a zero.

(ii) [Reserved]

(d) *Electronic fish tickets.* IFQ first receivers using the electronic fish ticket software provided by Pacific States Marine Fisheries Commission are required to meet the hardware and software requirements below. Those IFQ first receivers who have NMFS-approved software compatible with the standards specified by Pacific States Marine Fisheries Commission for electronic fish tickets are not subject to any specific hardware or software requirements.

(1) *Hardware and software requirements.* (i) A personal computer with Pentium 75-MHz or higher. Random Access Memory (RAM) must have sufficient megabyte (MB) space to run the operating system, plus an additional 8 MB for the software application and available hard disk space of 217 MB or greater. A CD–ROM drive with a Video Graphics Adapter (VGA) or higher resolution monitor (super VGA is recommended).

(ii) Microsoft Windows 2000 (64 MB or greater RAM required), Windows XP (128 MB or greater RAM required), or later operating system.

(iii) Microsoft Access 2003 or newer.

(2) *NMFS approved software standards and Internet access.* The IFQ first receiver is responsible for obtaining, installing, and updating electronic fish tickets software either provided by Pacific States Marine Fisheries Commission, or compatible with the data export specifications specified by Pacific States Marine Fisheries Commission and for maintaining Internet access sufficient to transmit data files via e-mail. Requests for data export specifications can be submitted to: Attn: Electronic Fish Ticket Monitoring, National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115.

(3) *Maintenance.* The IFQ first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever they receive, purchase, or take custody, control, or possession of an IFQ landing.

(4) *Improving data quality.* Vessel owners and operators, IFQ first receivers, or shoreside processor owners, or managers may contact NMFS in writing to request assistance in improving data quality and resolving issues. Requests may be submitted to: Attn: Electronic Fish Ticket Monitoring, National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Seattle, WA 98115.

7. Section 660.16 is revised to read as follows:

§ 660.16 Groundfish observer program.

(a) *General.* Vessel owners, operators, and managers are jointly and severally responsible for their vessel's compliance with observer requirements specified in this section and within §§ 660.140, 660.150, 660.160, subpart D; § 660.216, subpart E; § 660.316, subpart F; or subpart G.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to collect fisheries data necessary and appropriate for, among other relevant purposes, management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources.

(c) *Observer coverage requirements.* The following table provides references to the paragraphs in the Pacific coast groundfish subparts that contain fishery specific requirements. Observer coverage required for the Shorebased IFQ Program, MS Coop Program, or C/P Coop Program shall not be used to comply with observer coverage requirements for any other Pacific coast groundfish fishery in which that vessel may also participate.

West coast groundfish fishery	*Regulation section*
(1) Shorebased IFQ Program—Trawl Fishery	§ 660.140, subpart D.
(2) MS Coop Program—Whiting At-sea Trawl Fishery	§ 660.150, subpart D.

West coast groundfish fishery	*Regulation section*
(3) C/P Coop Program—Whiting At-sea Trawl Fishery	§ 660.160, subpart D.
(4) Fixed Gear Fisheries	§ 660.216, subpart E.
(5) Open Access Fisheries	§ 660.316, subpart F.

8. Section 660.17 is added to read as follows:

§ 660.17 Catch monitors and catch monitor providers.

(a) *Catch monitor certification.* Catch monitor certification authorizes an individual to fulfill duties as specified by NMFS while under the employ of a certified catch monitor provider.

(b) *Catch monitor certification requirements.* NMFS may certify individuals who:

(1) Are employed by a certified catch monitor provider at the time of the issuance of the certification and qualified, as described at paragraph (e)(1)(i) through (viii) of this section and have provided proof of qualifications to NMFS, through the certified catch monitor provider.

(2) Have successfully completed NMFS-approved training.

(i) Successful completion of training by an applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by NMFS.

(ii) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: The reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions.

(3) Have not been decertified as an observer or catch monitor under provisions in §§ 660.18, 660.140(h)(6), 660.150(g)(6), and 660.160(g)(6).

(4) *Existing catch monitors as of 2010.* A catch monitor who has completed sampling or monitoring activities in 2010 in NMFS-managed West Coast groundfish fisheries, and has not had his or her certification revoked during or after that time, will be considered to have met his or her certification requirements under this section. These catch monitors will be issued a new catch monitor certification prior to their first deployment to a first receiver after December 31, 2010, unless NMFS determines that he or she has not completed any additional training required for this program.

(c) *Catch monitor standards of behavior.* Catch monitors must do the following:

(1) Perform authorized duties as described in training and instructional manuals or other written and oral instructions provided by NMFS.

(2) Accurately record and submit the required data, which includes fish species composition, identification, sorting, and weighing information.

(3) Write complete reports, and report accurately any observations of suspected violations of regulations.

(4) Keep confidential and not disclose data and observations collected at the processing facility to any person except, NMFS staff or authorized officers or others as specifically authorized by NMFS.

(d) *Catch monitor provider certification.* Persons seeking to provide catch monitor services under this section must obtain a catch monitor provider certification from NMFS.

(1) *Applications.* Persons seeking to provide catch monitor services must submit a completed application by mail to the NMFS Northwest Region, Permits Office, *Attn:* Catch Monitor Coordinator, 7600 Sand Point Way NE., Seattle, WA 98115. An application for a catch monitor provider permit shall consist of a narrative that contains the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) *Contact information.* (A) The owner's permanent mailing address, telephone, and fax numbers.

(B) The business mailing address, including the physical location, e-mail address, telephone and fax numbers.

(C) Any authorized agent's mailing address, physical location, e-mail address, telephone and fax numbers. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of a catch monitor provider.

(iii) *Prior experience.* A statement identifying prior relevant experience in recruiting, hiring, deploying, and providing support for individuals in marine work environments in the groundfish fishery or other fisheries of similar scale.

(iv) *Ability to perform or carry out responsibilities of a catch monitor provider.* A description of the applicant's ability to carry out the responsibilities of a catch monitor provider is set out under paragraph (e) of this section.

(v) A statement describing any criminal convictions of each owner and board member, officer, authorized agent, and staff; a list of Federal contracts held and related performance ratings; and, a description of any previous decertification actions that may have been taken while working as an observer or observer provider.

(vi) A statement describing each owner and board member, officer, authorized agent, and staff indicating that they are free from conflict of interest as described under § 660.18(d).

(2) *Application review.* (i) The certification official, described in § 660.18(a), may issue catch monitor provider certifications upon determination that the application submitted by the candidate meets all requirements specified in paragraph (d)(2)(ii) of this section.

(ii) Issuance of the certification will, at a minimum, be based on the completeness of the application, as well as the following criteria:

(A) The applicant's ability to carry out the responsibilities and relevant experience;

(B) Satisfactory performance ratings on any Federal contracts held by the applicant.

(C) Absence of a conflict of interest.

(D) Absence of relevant criminal convictions.

(3) *Agency determination.* The certification official will make a determination to approve or deny the application and notify the applicant by letter via certified return receipt mail, within 60 days of receipt of the application. Additional certification procedures are specified in § 660.18, subpart C.

(4) *Existing catch monitor providers as of 2010.* NMFS-certified providers

who deployed catch monitors in a NMFS-managed West Coast groundfish fishery or observers under the North Pacific Groundfish Program in 2010, are exempt from the requirement to apply for a permit for 2011 and will be issued a catch monitor provider permit effective through December 31, 2011, except that a change in ownership of an existing catch monitor provider or observer provider after January 1, 2011, requires a new permit application under this section. To receive catch monitor certification for 2012 and beyond, these exempted catch monitor providers must follow application procedures otherwise set forth in this section.

(e) *Catch monitor provider responsibilities.* (1) *Provide qualified candidates to serve as catch monitors.* To be qualified a candidate must:

(i) Be a U.S. citizen or have authorization to work in the United States;

(ii) Be at least 18 years of age;

(iii) Have a high school diploma and;

(A) At least two years of study from an accredited college with a major study in natural resource management, natural sciences, earth sciences, natural resource anthropology, law enforcement/police science, criminal justice, public administration, behavioral sciences, environmental sociology, or other closely related subjects pertinent to the management and protection of natural resources, or;

(B) One year of specialized experience performing duties which involved communicating effectively and obtaining cooperation, identifying and reporting problems or apparent violations of regulations concerning the use of protected or public land areas, and carrying out policies and procedures within a recreational area or natural resource site.

(iv) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(v) Have a current and valid driver's license.

(vi) Have had a background investigation and been found to have had no criminal or civil convictions that would affect their performance or credibility as a catch monitor.

(vii) Have had health and physical fitness exams and been found to be fit for the job duties and work conditions;

(A) Physical fitness exams shall be conducted by a medical doctor who has been provided with a description of the job duties and work conditions and who provides a written conclusion regarding the candidate's fitness relative to the required duties and work conditions; and

(B) Physical exams may include testing for illegal drugs;

(viii) Have signed a statement indicating that they are free from conflict of interest as described under § 660.18(c); and

(ix) Priority shall be given to qualified candidates who have and show proof of their knowledge of West Coast marine fish species, ability to effectively communicate in writing and orally, and have technical expertise in weights and measures.

(2) *Standards.* Provide to the candidate a copy of the standards of conduct, responsibilities, conflict of interest standards and drug and alcohol policy.

(3) *Contract.* Provide to the candidate a copy of a written contract signed by the catch monitor and catch monitor provider that shows among other factors the following provisions for employment:

(i) Compliance with the standards of conduct, responsibilities, conflict of interest standards and drug and alcohol policy;

(ii) Willingness to complete all responsibilities of current deployment prior to performing jobs or duties which are not part of the catch monitor responsibilities.

(iii) Commitment to return all sampling or safety equipment issued for the deployment.

(4) *Catch monitors provided to a first receiver.*

(i) Must have a valid catch monitor certification;

(ii) Must not have informed the provider prior to the time of assignment that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (e)(1)(vii)(A) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Must have successfully completed all NMFS required training and briefing before assignment.

(5) *Respond to industry requests for catch monitors.* A catch monitor provider must provide a catch monitor for assignment pursuant to the terms of the contractual relationship with the first receiver to fulfill first receiver requirements for catch monitor coverage under paragraph (e)(10)(i)(C)(*1*)(*ii*) of this section. An alternate catch monitor must be supplied in each case where injury or illness prevents the catch monitor from performing his or her duties or where the catch monitor resigns prior to completion of his or her duties. If the catch monitor provider is unable to respond to an industry request for catch monitor coverage from a first receiver for whom the provider is in a contractual relationship due to the lack of available catch monitors, the provider must report it to NMFS at least 4 hours prior to the expected assignment time.

(6) *Ensure that catch monitors complete duties in a timely manner.* Catch monitor providers must ensure that catch monitors employed by that provider do the following in a complete and timely manner:

(i) Submit to NMFS all data, logbooks and reports as required under the catch monitor program deadlines.

(ii) Report for his or her scheduled debriefing and complete all debriefing responsibilities.

(7) *Provide catch monitor salaries and benefits.* A catch monitor provider must provide to its catch monitor employees salaries and any other benefits and personnel services in accordance with the terms of each catch monitor's contract.

(8) *Provide catch monitor assignment logistics.*

(i) A catch monitor provider must ensure each of its catch monitors under contract:

(A) Has an individually assigned mobile or cell phones, in working order, for all necessary communication. A catch monitor provider may alternatively compensate catch monitors for the use of the catch monitor's personal cell phone or pager for communications made in support of, or necessary for, the catch monitor's duties.

(B) Has Internet access for catch monitor program communications and data submission.

(C) Remains available to NOAA Office for Law Enforcement and the catch monitor program until the completion of the catch monitors' debriefing.

(D) Receives all necessary transportation, including arrangements and logistics, of catch monitors to the location of assignment, to all subsequent assignments during that assignment, and to the debriefing location when an assignment ends for any reason; and

(E) Receives lodging, per diem, and any other services necessary to catch monitors assigned to first receivers, as specified in the contract between the catch monitor and catch monitor provider.

(F) While under contract with a permitted catch monitor provider, catch monitor shall be provided with accommodations in accordance with the contract between the catch monitor and the catch monitor provider. If the catch monitor provider is responsible for providing accommodations under the contract with the catch monitor, the

accommodations must be at a licensed hotel, motel, bed and breakfast, or other accommodations that has an assigned bed for each catch monitor that no other person may be assigned to for the duration of that catch monitor's stay.

(ii) [Reserved]

(9) *Catch monitor assignment limitations and workload.*

(i) Not assign a catch monitor to the same first receiver for more than 90 calendar days in a 12-month period, unless otherwise authorized by NMFS.

(ii) Not exceed catch monitor assignment limitations and workload as outlined in § 660.140(i)(3)(ii), subpart D.

(10) *Maintain communications with catch monitors.* A catch monitor provider must have an employee responsible for catch monitor activities on call 24 hours a day to handle emergencies involving catch monitors or problems concerning catch monitor logistics, whenever catch monitors are assigned, or in transit, or awaiting first receiver reassignment.

(11) *Maintain communications with the catch monitor program office.* A catch monitor provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(i) *Catch monitor training, briefing, and debriefing registration materials.* This information must be submitted to the catch monitor program at least 7 business days prior to the beginning of a scheduled catch monitor certification training or briefing session.

(A) Training registration materials consist of the following:

(*1*) Date of requested training;

(*2*) A list of catch monitor candidates that includes each candidate's full name (*i.e.,* first, middle and last names), date of birth, and gender;

(*3*) A copy of each candidate's academic transcripts and resume;

(*4*) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions;

(*5*) Projected candidate assignments. Prior to the completion of the training session, the catch monitor provider must submit to the catch monitor program a statement of projected catch monitor assignments that includes each catch monitor's name and length of catch monitor's contract.

(B) Briefing registration materials consist of the following:

(*1*) Date and type of requested briefing session;

(*2*) List of catch monitors to attend the briefing session, that includes each catch monitor's full name (first, middle, and last names);

(*3*) Projected catch monitor assignments. Prior to the catch monitor's completion of the briefing session, the catch monitor provider must submit to the catch monitor program a statement of projected catch monitor assignments that includes each catch monitor's name and length of observer contract.

(C) *Debriefing.* The catch monitor program will notify the catch monitor provider which catch monitors require debriefing and the specific time period the provider has to schedule a date, time, and location for debriefing. The catch monitor provider must contact the catch monitor program within 5 business days by telephone to schedule debriefings.

(*1*) Catch monitor providers must immediately notify the catch monitor program when catch monitors end their contract earlier than anticipated.

(*2*) [Reserved]

(ii) *Catch monitor provider contracts.* If requested, catch monitor providers must submit to the catch monitor program a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the catch monitor provider and those entities requiring catch monitor services under § 660.140(i)(1), subpart D. Catch monitor providers must also submit to the catch monitor program upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to catch monitor compensation or salary levels) between the catch monitor provider and the particular entity identified by the catch monitor program or with specific catch monitors. The copies must be submitted to the catch monitor program via e-mail, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts a catch monitor provider has with:

(A) First receivers required to have catch monitor coverage as specified at paragraph § 660.140(i)(1), subpart D; and

(B) Catch monitors.

(iii) *Change in catch monitor provider management and contact information.* A catch monitor provider must submit to the catch monitor program any change of management or contact information submitted on the provider's permit application under paragraph (d)(1) of this section within 30 days of the effective date of such change.

(iv) *Catch monitor status report.* Each Tuesday, catch monitor providers must provide NMFS with an updated list of contact information for all catch monitors that includes the catch monitor's name, mailing address, e-mail address, phone numbers, first receiver assignment for the previous week and whether or not the catch monitor is "in service", indicating when the catch monitor has requested leave and/or is not currently working for the provider.

(v) *Informational materials.* Providers must submit to NMFS, if requested, copies of any information developed and used by the catch monitor providers and distributed to first receivers, including, but not limited to, informational pamphlets, payment notification, and description of catch monitor duties.

(vi) *Other reports.* Reports of the following must be submitted in writing to the catch monitor program by the catch monitor provider via fax or e-mail address designated by the catch monitor program within 24 hours after the catch monitor provider becomes aware of the information:

(A) Any information regarding possible catch monitor harassment;

(B) Any information regarding any action prohibited under § 660.12(f);

(C) Any catch monitor illness or injury that prevents the catch monitor from completing any of his or her duties described in the catch monitor manual; and

(D) Any information, allegations or reports regarding catch monitor conflict of interest or breach of the standards of behavior described in catch monitor provider policy.

(12) *Replace lost or damaged gear.* A catch monitor provider must replace all lost or damaged gear and equipment issued by NMFS to a catch monitor under contract to that provider.

(13) *Confidentiality of information.* A catch monitor provider must ensure that all records on individual catch monitor performance received from NMFS under the routine use provision of the Privacy Act or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the catch monitor provider company to whom the catch monitor was contracted except with written permission of the catch monitor.

9. Section 660.18 is revised to read as follows:

§ 660.18 Certification and decertification procedures for catch monitors and catch monitor providers.

(a) *Certification official.* The Regional Administrator (or a designee) will designate a NMFS catch monitor certification official who will make decisions on whether to issue or deny catch monitor or catch monitor provider

certification pursuant to the regulations at §§ 660.17 and 660.18, subpart C.

(b) *Agency determinations on certifications.* (1) *Issuance of certifications*—Certification may be issued upon determination by the certification official that the candidate has successfully met all requirements for certification as specified in:

(i) § 660.17(b) for catch monitors; and

(ii) § 660.17(d) for catch monitor providers.

(2) *Denial of a certification.* The NMFS certification official will issue a written determination identifying the reasons for denial of a certification.

[Alternative 1 for paragraph (c) (Council-deemed)]

(c) *Limitations on conflict of interest for catch monitors.* (1) Catch monitors must not have a direct financial interest in the first receivers at which they serve as catch monitors or vessels that deliver to those first receivers, other than the provision of observer or catch monitor services.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

(3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider.

(5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

[Alternative 2 for paragraph (c) (NMFS-proposed)]

(c) *Limitations on conflict of interest for catch monitors.* (1) Catch monitors must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska State waters, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

(3) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider.

(5) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

(d) *Limitations on conflict of interest for catch monitor providers.* Catch monitor providers must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska State waters, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(e) *Decertification.* (1) *Decertification review official*—The Regional Administrator (or a designee) will designate a decertification review official(s), who will have the authority to review certifications and issue IADs of decertification.

(2) *Causes for decertification.* The decertification official may initiate decertification proceedings when it is alleged that any of the following acts or omissions have been committed:

(i) Failed to satisfactorily perform the specified duties and responsibilities;

(ii) Failed to abide by the specified standards of conduct;

(iii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties and responsibilities specified in this section;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of catch monitors.

(3) *Issuance of IAD.* Upon determination that decertification is warranted under § 660.17(c) or (e), the decertification official will issue a written IAD. The IAD will identify the specific reasons for the action taken. Decertification is effective 30 days after the date of issuance, unless there is an appeal.

(4) *Appeals.* Pursuant to § 679.43, a catch monitor who receives an IAD that revokes certification may appeal within 30 days of the determination revoking the certification.

10. In § 660.25, paragraphs (b)(1)(i)(A) and (B) are removed; paragraph (b)(4)(i)(F) is added; paragraphs (b)(4)(iv)(A), (b)(4)(v)(A), (b)(4)(v)(C), (b)(4)(vi)(C), and (e) are revised to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(F) A limited entry permit will not be renewed until a complete economic data collection form is submitted as required under § 660.113(b), (c) and (d), subpart D. The permit renewal will be marked incomplete until the required information is submitted.

* * * * *

(iv) *Changes in permit ownership and permit holder*—(A) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD

will not approve a change in permit ownership for a limited entry permit with a MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), subpart D, and § 660.150(f)(3), subpart D, respectively. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. During the initial issuance application period for the trawl rationalization program, NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time during the application period as specified at § 660.140(d)(8)(viii) for QS applicants, at § 660.150(g)(6)(vii) for MS/CV endorsement applicants, and at § 660.160(d)(7)(vii) for C/P endorsement applicants.

* * * * *

(v) *Changes in vessel registration-transfer of limited entry permits and gear endorsements*—(A) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to transfer limited entry permits with sablefish endorsements will not be approved until SFD has received complete documentation of permit ownership as described at paragraph (b)(3)(iv)(C)(*4*) and as required under paragraph (b)(4)(vii) of this section. Applications to transfer limited entry permits with trawl endorsements or MS permits will not be approved until SFD has received complete EDC forms as required under § 660.114, subpart D.

* * * * *

(C) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit, except for MS permits and C/P endorsed permits will take effect immediately upon reissuance to the new vessel. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

* * * * *

(vi) * * *

(C) *Limited entry MS permits and limited entry permits with a MS/CV or C/P endorsement.* Limited entry MS permits and limited entry permits with a MS/CV or C/P endorsement may be registered to another vessel up to two times during the fishing season as long as the second transfer is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first transfer would be to another vessel, but any second transfer must be back to the original vessel. For a MS/CV endorsed permit on the second transfer back to the original vessel, that vessel must be used to fish exclusively in the MS Coop Program described § 660.150, and declare in to the limited entry midwater trawl, Pacific whiting mothership sector as specified at § 660.13(d)(5)(iv).

* * * * *

(e) *Coop permit*—(1) *MS coop permit.* A MS coop permit conveys a conditional privilege to an eligible coop entity to receive and manage a coop's allocation of designated species and species groups. A MS coop permit is not a limited entry permit. The provisions for the MS coop permit, including eligibility, renewal, change of permit ownership, fees, and appeals are described in the MS Coop Program at § 660.150, subpart D.

(2) *C/P coop permit.* A C/P coop permit conveys a conditional privilege to an eligible coop entity to receive and manage a coop's allocation of designated species and species groups. A C/P coop permit is not a limited entry permit. The provisions for the C/P coop permit, including eligibility, renewal, change of permit ownership, fees, and appeals are described in the C/P Coop Program at § 660.160, subpart D.

* * * * *

§ 660.26 [Removed]

11. Section 660.26 is removed.

12. In § 660.55, paragraph (i)(2) is revised to read as follows:

§ 660.55 Allocations.

* * * * *

(i) * * *

(2) The commercial harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a and 2a of this subpart. Set asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1d and 2d of this subpart.

* * * * *

13. In § 660.60, paragraph (d)(1), paragraph (h)(2), and paragraph (h)(5)(ii), (h)(5)(iii), and (h)(5)(iv) are revised; and paragraphs (h)(5)(v) through (xii) are added to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(d) * * *

(1) Automatic actions are used in the Pacific whiting fishery to:

(i) Close an at-sea sector of the fishery when that sector's Pacific whiting allocation is reached, or is projected to be reached;

(ii) Close all at-sea sectors or a single sector of the fishery when a non-whiting groundfish species with allocations is reached or projected to be reached;

(iii) Reapportion unused allocations of non-whiting groundfish species from one at-sea sector of the Pacific whiting fishery to another.

(iv) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), subpart D, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(v) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4) Subpart D, when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

* * * * *

(h) * * *

(2) *Landing.* As stated at § 660.11, subpart C (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. Transfer of fish at sea is prohibited under § 660.12, subpart C, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a), subpart D. Catcher vessels in the mothership sector must transfer all catch from a haul to the same vessel registered to a MS permit prior to the gear being set for a

subsequent haul. Catch may not be transferred to a tender vessel.

* * * * *

(5) * * *

(ii) *Weight limits and conversions.* To determine the round weight, multiply the processed weight times the conversion factor. For participants in the Shorebased IFQ Program landing sorted catch, the weight conversions are provided below for purposes of applying QP. For participants in the limited entry fixed gear or open access fisheries, the weight limit conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit or other allocation. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon, and California and may be subject to change by those States. Fishery participants should contact fishery enforcement officials in the State where the fish will be landed to determine that State's official conversion factor.

(iii) *Sablefish.* The following conversions apply:

(A) The following conversion applies to both the limited entry fixed gear and open access fisheries: For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6.

(B) The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.47.

(iv) *Lingcod.* The following conversions apply:

(A) North of 42° N. lat., for lingcod with the head removed, the minimum size limit is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(B) South of 42° N. lat., for lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(C) The following conversions apply in both limited entry fixed gear and open access fisheries: For headed and gutted (eviscerated) lingcod, the weight conversion factor is 1.5; for lingcod that has only been gutted with the head on, the weight conversion factor is 1.1.

(D) The following conversions apply to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.43; for lingcod that has only been gutted with the head on, the weight conversion factor is 1.1.

(v) *Pacific whiting.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted Pacific whiting (head removed just in front of the collar bone and viscera removed), the weight conversion factor is 1.67; for headed and gutted Pacific whiting with the tail removed the weight conversion factor is 2.0.

(vi) *Rockfish (including thornyheads), except POP.* The following conversions apply to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.75; for headed and gutted, western cut (head removed just in front of the collar bone and viscera removed), the weight conversion factor is 1.66; for headed and gutted, eastern cut (head removed just in behind the collar bone and viscera removed,) the weight conversion factor is 2.0.

(vii) *Pacific ocean perch (POP).* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.6.

(viii) *Pacific cod.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.58.

(ix) *Dover sole, English sole, and "other flatfish".* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.53.

(x) *Petrale sole.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.51.

(xi) *Arrowtooth flounder.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.35.

(xii) *Starry flounder.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.49.

* * * * *

14. Section 660.100 is revised to read as follows:

§ 660.100 Purpose and scope.

This subpart covers the Pacific coast groundfish limited entry trawl fishery. Under the trawl rationalization program, the limited entry trawl fishery consists of the Shorebased IFQ Program, the MS Coop Program, and the C/P Coop Program. Nothing in these regulations shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. The trawl rationalization program creates limited access privileges. These limited access privileges, including the QS or IBQ, QP or IBQ pounds, and catch history assignments, may be revoked, limited or modified at any time in accordance with the MSA—and do not create any right of compensation to the holder of the limited access privilege if it is revoked, limited, or modified. The trawl rationalization program does not create any right, title, or interest in or to any fish before the fish is harvested by the holder and shall be considered a grant of permission to the holder of the limited access privilege to engage in activities permitted by the trawl rationalization program.

15. In § 660.111, the following definitions are removed: "Pacific whiting shoreside first receivers", "Pacific whiting shoreside or shore-based fishery", "Pacific whiting shoreside vessel," and "Vessel limits"; "Pacific whiting IFQ fishery" is revised; and new definitions are added in alphabetical order for: "accumulation limits," "charterer," "complete economic data collection (EDC) form," "IFQ trip", "lessee," and "Pacific whiting IFQ trip".

§ 660.111 Trawl fishery—definitions.

* * * * *

Accumulation limits mean the maximum extent of permissible ownership, control or use of a privilege within the trawl rationalization program, and include the following:

(1) *Shorebased IFQ Program.* (i) *Control limits* means the maximum amount of QS that a person may own or control, as described at § 660.140(d)(4).

(ii) *Vessel limits* means the maximum amount of QP a vessel can hold, acquire, and/or use during a calendar year, and specify the maximum amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP registered to a vessel account at any one time (Unused QP Vessel Limit), as described at § 660.140(e)(4).

(2) *MS Coop Program.* (i) MS permit usage limit means the maximum amount of the annual mothership sector Pacific whiting allocation that a person may cumulatively process, no more than 45 percent, as described at § 660.150(f)(3)(i).

(ii) MS/CV permit ownership limit means the maximum amount of catch history assignment that a person may own, no more than 20 percent of the MS

sector's allocation of Pacific whiting, as described at § 660.150(g)(3)(i).

(iii) Catcher vessel usage limit means the maximum amount of the annual mothership sector Pacific whiting allocation that a vessel may catch, no more than 30 percent, as described at § 660.150(g)(3)(ii).

* * * * *

Charterer means, for the purpose of economic data collection program, a person, other than the owner of the vessel, who: Entered in to any agreement or commitment by which the possession or services of the vessel are secured for a period of time for the purposes of commercially harvesting or processing fish. A long-term or exclusive contract for the sale of all or a portion of the vessel's catch or processed products is not considered a charter.

* * * * *

Complete economic data collection (EDC) form means that a response is supplied for each question, sub-question, and answer-table cell. If particular question or sub-question is not applicable, "NA", must be entered in the appropriate space on the form. The form must also be signed and dated to certify that the information is true and complete to the best of the signatory's knowledge.

* * * * *

IFQ trip means a trip in which the vessel has a valid fishing declaration for any of the following: Limited entry midwater trawl, non-whiting shorebased IFQ; Limited entry midwater trawl, Pacific whiting shorebased IFQ; Limited entry bottom trawl, shorebased IFQ, not including demersal trawl; Limited entry demersal trawl, shorebased IFQ; or Limited entry groundfish non-trawl, shorebased IFQ.

* * * * *

Lessee means, for the purpose of economic data collection program, a person, other than the owner of the vessel or facility, who: Was identified as the leaseholder, in a written lease, of the vessel or facility, or paid expenses of the vessel or facility, or claimed expenses for the vessel or facility as a business expense on a Federal income tax return, or on a State income tax return.

* * * * *

Pacific whiting IFQ fishery means the Shorebased IFQ Program fishery composed of vessels making Pacific whiting IFQ trips pursuant to the requirements at § 660.131 during the primary whiting season fishery dates for the Shorebased IFQ Program.

Pacific whiting IFQ trip means a trip in which a vessel registered to a limited entry permit uses legal midwater groundfish trawl gear with a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ, as specified at § 660.13(d)(5)(iv)(A) during the dates that the Pacific whiting IFQ fishery primary season.

* * * * *

16. In § 660.112:

a. Paragraph (f) is removed;

b. Paragraph (a)(2) is added;

c. Paragraph (a)(3)(iii) is added;

d. Paragraph (a)(4) is redesignated as paragraph (a)(5), and a new paragraph (a)(4) is added; and

e. Paragraphs (b) through (e) are added to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(2) *Sorting.* Fail to sort catch consistent with the requirements specified at § 660.130(d).

* * * * *

(3) * * *

(iii) Failure to submit a complete EDC form to NMFS as required by § 660.113.

* * * * *

(4) *Observers.* (i) Fish (including processing, as defined at § 600.10 of this chapter) in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if NMFS determines the vessel is unsafe for an observer.

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage.

* * * * *

(b) *Shorebased IFQ program*—(1) *General.* (i) Own or control by any means whatsoever an amount of QS that exceeds the Shorebased IFQ Program accumulation limits.

(ii) Fish in the Shorebased IFQ Program with a vessel that does not have a valid vessel account or that has a vessel account with a deficit (negative balance) for any species/species group.

(iii) Have any IFQ species/species group catch (landings and discards) from an IFQ trip not covered by QP for greater than 30 days from the date the deficit (negative balance) from that trip is documented, unless the deficit is within the limits of the carryover provision specified at § 660.140(e)(5), subpart D, in which case the vessel has 30 days after the QP for the following year are issued to eliminate the deficit.

(iv) Transfer the limited entry trawl endorsed permit to another vessel or sell the limited entry trawl endorsed permit to another owner if the vessel registered to the permit has an overage (catch not covered by QP), until the overage is covered, regardless of the amount of the overage.

(v) Use QP by vessels not registered to a limited entry trawl permit with a valid vessel account.

(vi) Use QP in an area or for species/species groups other than that for which it is designated.

(vii) Fish in more than one IFQ management area, specified at § 660.140(c)(2), on the same trip.

(viii) Fish on a Pacific whiting IFQ trip with a gear other than legal midwater groundfish trawl gear.

(ix) Fish on a Pacific whiting IFQ trip without a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ, as specified at § 660.13(d)(5)(iv)(A), subpart C.

(x) Use midwater trawl gear to fish for Pacific whiting within an RCA outside the Pacific whiting IFQ fishery primary season as specified at § 660.131(b)(2)(iii).

(xi) Bring a haul on board before all catch from the previous haul has been stowed.

(xii) Process groundfish at-sea ("at-sea processing") by vessels in the Shorebased IFQ Program regardless of the type of gear used, with the following exceptions:

(A) A vessel that is 75-ft (23-m) or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a catcher/processor nor is it considered to be processing fish, and

(B) A vessel that has a sablefish at-sea processing exemption, defined at § 660.25(b)(3)(iv)(D), subpart C may process sablefish at-sea.

(xiii) Retain any IFQ species/species group onboard a vessel unless the vessel has observer coverage. A vessel may deliver IFQ species/species groups to more than one IFQ first receiver, but must maintain observer coverage until all IFQ species from the trip are offloaded. Once transfer of fish begins, all fish aboard the vessel are counted as part of the same landing as defined at § 660.11.

(xiv) Discard IFQ species/species group onboard a vessel unless observer has documented the amount and species of the discards.

(2) *IFQ first receivers.* (i) Accept an IFQ landing without a valid first receiver site license.

(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at § 660.130(d)(2) for the Shorebased IFQ Program, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C may weigh catch on a bulk scale before sorting as described at § 660.140(j)(2).

(iii) Process, sell, or discard any groundfish received from an IFQ landing that has not been weighed on a scale that is in compliance with requirements at § 660.15, subpart C.

(iv) Transport catch away from the point of landing before that catch has been sorted and weighed by Federal groundfish species or species group, and recorded for submission on an electronic fish ticket. (If fish will be transported to a different location for processing, all sorting and weighing to Federal groundfish species groups must occur before transporting the catch away from the point of landing).

(v) Receive an IFQ landing without coverage by a catch monitor when one is required by regulations, unless NMFS has granted a written waiver exempting the IFQ first receiver from the catch monitor coverage requirements. On a case-by-case basis, a temporary written waiver may be granted by the Assistant Regional Administrator or designee if he/she determines that the failure to obtain coverage of a catch monitor was due to circumstances beyond the control of the first receiver. The duration of the waiver will be determined on a case-by-case basis.

(vi) Receive an IFQ landing without a NMFS-accepted catch monitoring plan or not in accordance with their NMFS-accepted catch monitoring plan.

(vii) Mix catch from more than one IFQ landing prior to the catch being sorted and weighed.

(viii) Fail to comply with the IFQ first receiver responsibilities specified at § 660.140(b)(2).

(ix) Process, sell, or discard any groundfish received from an IFQ landing that has not been accounted for on an electronic fish ticket with the identification number for the vessel that delivered the fish.

(x) Fail to submit, or submit incomplete or inaccurate information on any report, application, or statement required under this part.

(c) *MS and C/P Coop Programs.* (1) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel fishes, unless:

(i) The fish are received from a member of a Pacific Coast treaty Indian Tribe fishing under § 660.50, subpart C;

(ii) The fish are processed by a waste-processing vessel according to § 660.131(h), subpart D; or

(iii) The vessel is completing processing of Pacific whiting taken on board prior to the close of that vessel's primary season.

(2) During times or in areas where at-sea processing is prohibited, take and retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the Tribal U&A from a member of a Pacific Coast treaty Indian Tribe fishing under § 660.50, subpart C.

(3) Operate as a waste-processing vessel within 48 hours of a primary season for Pacific whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.131(h), subpart D.

(4) On a vessel used to fish for Pacific whiting, fail to keep the trawl doors on board the vessel, when taking and retention is prohibited under § 660.131(b), subpart D.

(5) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector before the catcher vessel observer completes sampling of the catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer.

(d) *MS Coop Program (coop and non-coop fisheries).* (1) Catch, take, or harvest fish in the mothership non-coop fishery with a vessel that is not registered to a current MS/CV-endorsed limited entry trawl permit.

(2) Receive catch, process catch, or otherwise fish as a mothership vessel if it is not registered to a current MS permit.

(3) Fish with a vessel in the mothership sector, if that vessel was used to fish in the C/P fishery in the same calendar year.

(4) Catch, take, or harvest fish in the MS Coop Program with a vessel that does not have a valid VMS declaration for limited entry midwater trawl, Pacific whiting mothership sector, as specified at § 660.13(d)(5)(iv)(A), subpart C.

(5) Transfer catch to a vessel that is not registered to a MS permit. (*i.e.* a tender vessel).

(6) Use a vessel registered to a limited entry permit with a trawl endorsement (with or without a MS/CV endorsement) to catch more than 30 percent of the Pacific whiting allocation for the mothership sector.

(7) Process more than 45 percent of the annual mothership sector's Pacific whiting allocation.

(8) Catch, take, or harvest fish before all catch from any previous haul has been transferred to a single vessel registered to a MS permit.

(9) Transfer catch from a single haul to more than one permitted MS vessel.

(10) Catch, take, or harvest fish for a MS coop with a vessel that has not been identified by the coop as a vessel authorized to harvest that coop's allocation.

(11) Catch, take, or harvest fish in the non-coop fishery with a vessel registered to a MS/CV endorsed permit in the same year the MS/CV endorsed permit was registered to a vessel that fished as a member of a coop in the MS Coop Program.

(12) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector before the catcher vessel observer completes sampling of the catch, except for minor operational amounts of catch lost by a catcher vessel provided the observer has accounted for the discard (*i.e.,* a maximized retention fishery).

(13) Mix catch from more than one haul before the observer completes their collection of catch for sampling.

(14) Take deliveries without a valid scale inspection report signed by an authorized scale inspector on board the vessel.

(15) Sort, process, or discard catch delivered to a mothership before the catch is weighed on a scale that meets the requirements of § 660.15(b), including the daily test requirements.

(e) *C/P Coop Program.* (1) Fish with a vessel in the catcher/processor sector that is not registered to a current C/P endorsed limited entry trawl permit.

(2) Fish as a catcher/processor vessel in the same year that the vessel fishes as a catcher vessel in the mothership fishery.

(3) Fish as a catcher/processor vessel in the same year that the vessel operates as a mothership in the mothership fishery.

(4) Fish in the C/P Coop Program with a vessel that does not have a valid VMS declaration for limited entry midwater trawl, Pacific whiting catcher/processor sector, as specified at § 660.13(d)(5)(iv)(A).

(5) Fish in the C/P Coop Program with a vessel that is not identified in the C/P coop agreement.

(6) Fish in the C/P Coop Program without a valid scale inspection report signed by an authorized scale inspector on board the vessel.

(7) Sort, process, or discard catch before the catch is weighed on a scale that meets the requirements of § 660.15(b), including the daily test requirements.

(8) Discard any catch from the codend or net (*i.e.* bleeding) before the observer has completed their data collection.

(9) Mix catch from more than one haul before the observer completes their collection of catch for sampling.

17. In § 660.113, paragraphs (a) through (c) are added, and paragraph (d) is revised, to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(a) *General requirements.* (1) All records or reports required by this paragraph must: Be maintained in English, be accurate, be legible, be based on local time, and be submitted in a timely manner.

(2) *Retention of Records.* All records used in the preparation of records or reports specified in this section or corrections to these reports must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS. Records used in the preparation of required reports specified in this section or corrections to these reports that are required to be kept include, but are not limited to, any written, recorded, graphic, electronic, or digital materials as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weight slips; preliminary, interim, and final tally sheets; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts. All relevant records used in the preparation of electronic fish ticket reports or corrections to these reports must be maintained for a period of not less than three years after the date and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

(b) *Shorebased IFQ Program.* (1) *Economic data collection (EDC) program.* The following persons are required to submit an EDC form as specified at § 660.114:

(i) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit.

(ii) All owners of a first receiver site license.

(iii) All owners and lessees of a shorebased processor.

(2) *Electronic vessel logbook.* [Reserved]

(3) *Gear switching declaration.* Any person with a limited entry trawl permit participating in the Shorebased IFQ Program using groundfish non-trawl gear (*i.e.,* gear switching) must submit a valid gear declaration reporting such participation as specified in § 660.13(d)(5)(iv)(A).

(4) *Electronic fish ticket.* The IFQ first receiver is responsible for compliance with all reporting requirements described in this paragraph.

(i) *Required information.* All IFQ first receivers must provide the following types of information: Date of landing, vessel that made the delivery, gear type used, catch area, first receiver, round weights of species landed listed by species or species group including species with no value, number of salmon by species, number of Pacific halibut, and any other information deemed necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(ii) *Submissions.* The IFQ first receiver must:

(A) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.15(c) and the vessel identification number.

(B) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at § 660.15(d)(1);

(C) Install, use, and update as necessary, any NMFS-approved software described at § 660.15(d)(3);

(D) Submit a completed electronic fish ticket for every IFQ landing no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified at paragraph (b)(4)(iv) of this section.

(iii) *Revising a submission.* In the event that a data error is found, electronic fish ticket submissions may be revised by resubmitting the revised form. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

(iv) *Waivers for submission.* On a case-by-case basis, a temporary written waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a first receiver would result in inadequate data submissions using the electronic fish ticket system. The duration of the waiver will be determined on a case-by-case basis.

(v) *Reporting requirements when a temporary waiver has been granted.* IFQ first receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper fish tickets must be sent by facsimile to NMFS, Northwest Region, Sustainable Fisheries Division, 206–526–6736 or by delivering it in person to 7600 Sand Point Way NE, Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing State requirements for landing receipts or fish receiving tickets.

(c) *MS Coop Program (coop and non-coop fisheries)*—(1) *Economic data collection (EDC) program.* The following persons are required to submit a complete economic data collection form as specified at § 660.114.

(i) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl MS/CV endorsed permit.

(ii) All owners, lessees, and charterers of a vessel registered to a MS permit.

(2) *NMFS-approved scales*—(i) *Scale test report form.* Mothership vessel operators are responsible for conducting scale tests and for recording the scale test information on the at-sea scale test report form as specified at § 660.15(b), subpart C, for mothership vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight printouts are specified at § 660.15(b), subpart C, for mothership vessels.

(iii) *Retention of scale records and reports.* The vessel must maintain the test report form on board until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMPS staff, or authorized officers. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(3) *Annual coop report*—(i) The designed coop manager for the mothership coop must submit an annual report to the Pacific Fishery Management Council for their November meeting each year. The annual coop report will contain information about the current year's fishery, including:

(A) The mothership sector's annual allocation of Pacific whiting and the permitted mothership coop allocation;

(B) The mothership coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;

(C) A description of the method used by the mothership coop to monitor performance of coop vessels that participated in the fishery;

(D) A description of any actions taken by the mothership coop in response to any vessels that exceed their allowed catch and bycatch; and

(E) Plans for the next year's mothership coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

(ii) The annual coop report submitted to the Pacific Fishery Management Council must be finalized to capture any additional fishing activity that year and submitted to NMFS by March 31 of the following year before a coop permit is issued for the following year.

(4) *Cease fishing report.* As specified at § 660.150(c)(4)(ii), the designated coop manager, or in the case of an inter-coop agreement, all of the designated coop managers must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year.

(d) *C/P Coop Program*—(1) *Economic data collection (EDC) program.* All owners, lessees, and charterers of a vessel registered to a C/P endorsed limited entry trawl permit are required to submit a complete economic data collection form as specified at § 660.114.

(2) *NMFS-approved scales*—(i) *Scale test report form.* Catcher/processor vessel operators are responsible for conducting scale tests and for recording the scale test information on the at-sea scale test report form as specified at § 660.15(b), subpart C, for C/P vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight print outs are specified at § 660.15(b), subpart C, for C/P vessels.

(iii) *Retention of scale records and reports.* The vessel must maintain the test report form on board until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or authorized officers. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(3) *Annual coop report*—(i) The designated coop manager for the C/P coop must submit an annual report to the Pacific Fishery Management Council for their November meeting each year. The annual coop report will contain information about the current year's fishery, including:

(A) The C/P sector's annual allocation of Pacific whiting;

(B) The C/P coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;

(C) A description of the method used by the C/P coop to monitor performance of cooperative vessels that participated in the fishery;

(D) A description of any actions taken by the C/P coop in response to any vessels that exceed their allowed catch and bycatch; and

(E) Plans for the next year's C/P coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

(ii) The annual coop report submitted to the Pacific Fishery Management Council must be finalized to capture any additional fishing activity that year and submitted to NMFS by March 31 of the following year before a coop permit is issued for the following year.

(4) *Cease fishing report.* As specified at § 660.160(c)(5), the designated coop manager must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year.

18. Section 660.114 is added to read as follows:

§ 660.114 Trawl fishery—economic data collection program.

(a) *General.* The economic data collection (EDC) program collects mandatory economic data from participants in the trawl rationalization program. NMFS requires submission of an EDC form to gather ongoing, annual data for 2011 and beyond, as well as a onetime collection in 2011 of baseline economic data from 2009 through 2010.

(b) *Economic data collection program requirements.* The following fishery participants in the limited entry groundfish trawl fisheries are required to comply with the following EDC program requirements:

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
(1) Limited entry trawl catcher vessels.	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit at any time in 2009 or 2010.	(A) For permit owner, a limited entry trawl permit application (including MS/CV endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C and § 660.140(e), subpart D. (C) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP if own QS) will not be authorized, until the required EDC for their operation of that vessel is submitted.

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit at any time in 2011 and beyond.	(A) For permit owner, a limited entry trawl permit application (including MS/CV endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C and § 660.140(e), subpart D. (C) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP if own QS) will not be authorized, until the required EDC for their operation of that vessel is submitted.
(2) Motherships	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a mothership vessel that received whiting in 2009 or 2010 as recorded in NMFS' NORPAC database.	(A) For permit owner, a MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a mothership vessel registered to a MS permit at any time in 2011 and beyond.	(A) For permit owner, a MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(3) Catcher processors	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a catcher processor vessel that harvested whiting in 2009 or 2010 as recorded in NMFS' NORPAC database.	(A) For permit owner, a C/P endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a catcher processor vessel registered to a catcher processor permit at any time in 2011 and beyond.	(A) For permit owner, a C/P endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(4) First receivers/ shorebased processors.	(i) Baseline (2009 and 2010) economic data.	All owners and lessees of a shorebased processor and all buyers that received groundfish or whiting harvested with a limited entry trawl permit as listed in the PacFIN database in 2009 or 2010.	A first receiver site license application for a particular physical location for processing and buying will not be considered complete until the required EDC for the applying processor or buyer is submitted, as specified at § 660.140(f)(3), subpart D.
	(ii) Annual/ongoing (2011 and beyond) economic data.	(A) All owners of a first receiver site license in 2011 and beyond. (B) All owners and lessees of a shore-based processor (as defined under "processor" at § 660.11, subpart C, for purposes of EDC) that received round or headed-and-gutted IFQ species groundfish or whiting from a first receiver in 2011 and beyond.	A first receiver site license application will not be considered complete until the required EDC for that license owner associated with that license is submitted, as specified at § 660.140(f)(3), subpart D.

(c) *Submission of the EDC form and deadline*—(1) *Submission of the EDC form.* The complete, certified EDC form must be submitted to *Attn:* Economic Data Collection Program (FRAM Division), NMFS, Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112. A complete EDC form contains responses for all data fields, which include but are not limited to costs, labor, earnings, activity in a fishery, vessel or plant characteristics, value, quota, operational information, location of expenditures and earnings, ownership information and leasing information.

(2) *Deadline.* Complete, certified EDC forms must be mailed and postmarked by or hand-delivered to NMFS NWFSC no later than September 1, 2011, for baseline data, and, for the annual/ongoing data collection beginning September 1, 2012, September 1 each year for the prior year's data.

(d) *Confidentiality of information.* Information received on an EDC form will be considered confidential under applicable law and guidance.

(e) *EDC audit procedures*—(1) NMFS reserves the right to conduct verification of economic data with the submitter of the form. NMFS may employ a third party agent to conduct the audits.

(2) The submitter of the EDC form must respond to any inquiry by NMFS or a NMFS agent within 20 days of the date of issuance of the inquiry, unless an extension is granted by NMFS.

(3) The submitter of the form must provide copies of additional data to facilitate verification by NMFS or NMFS' agent upon request. The NMFS auditor may review and request copies of additional data provided by the submitter, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the economic data submitted.

§ 660.116 [Removed]

19. Section 660.116 is removed.

20. In § 660.130, paragraphs (a) and (d) are revised to read as follows:

§ 660.130 Trawl fishery—management measures.

(a) *General.* Limited entry trawl vessels are those vessels registered to a limited entry permit with a trawl endorsement and those vessels registered to a MS permit. Most species taken in limited entry trawl fisheries will be managed with quotas (*see* § 660.140), allocations or set-asides (*see* § 660.150 or § 660.160), or cumulative trip limits (*see* trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (*see* § 660.60 (h)(5), subpart C), seasons (*see* Pacific whiting at § 660.131(b), subpart D), gear restrictions (*see* paragraph (b) of this section) and closed areas (*see* paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The trawl fishery has gear requirements and harvest limits that differ by the type of trawl gear on board and the area fished. Groundfish vessels operating south of Point Conception must adhere to CCA restrictions (*see* paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive State commercial groundfish regulations relating to Federally-managed groundfish.

* * * * *

(d) *Sorting.* Under § 660.12(a)(8), subpart C, it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific

sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their State landing receipt.

(1) *Species and areas*—(i) *Coastwide.* Widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(ii) *North of 40°10′ N. lat.* POP, yellowtail rockfish;

(iii) *South of 40°10′ N. lat.* Minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(2) *Sorting requirements for the Shorebased IFQ Program*—(i) *First receivers.* Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C, may weigh catch on a bulk scale before sorting as described at § 660.140(j)(2).

(ii) *Catcher vessels.* All catch must be sorted to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those retaining all catch during a Pacific whiting IFQ trip. The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, other salmon. Non-groundfish species must be sorted as required by the State of landing.

(3) *Sorting requirements for the at-sea sectors of the Pacific whiting fishery.*

(i) Pacific whiting at-sea processing vessels may use an accurate in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch, the catch must be sorted to the species groups specified in paragraph (d)(1) of this section and all incidental catch (groundfish and non-groundfish species) must be accurately accounted for and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

(ii) *Catcher vessels in the MS sector.* If sorting occurs on the catcher vessel, the catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch.

* * * * *

21. In § 660.131:

a. Paragraphs (a) and (b), the introductory text of paragraph (c), and paragraphs (e) and (f) are revised;

b. Paragraphs (g), (h), and (k) are removed;

c. Paragraphs (i) and (j) are redesignated as paragraphs (g) and (h); and

d. The newly redesignated paragraph (g) is revised to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(a) *Sectors*—(1) The catcher/processor sector, or C/P Coop Program, is composed of catcher/processors registered to a limited entry permit with a C/P endorsement.

(2) The mothership sector, or MS Coop Program, is composed of motherships and catcher vessels that harvest Pacific whiting for delivery to motherships. Motherships are vessels registered to a MS permit, and catcher vessels are vessels registered to a limited entry permit with a MS/CV endorsement or vessels registered to a limited entry permit without a MS/CV endorsement if the vessel is authorized to harvest the coop's allocation.

(3) The Pacific whiting IFQ fishery is composed of vessels that harvest Pacific whiting for delivery shoreside to IFQ first receivers during the primary season.

(b) *Pacific whiting seasons*—(1) *Primary seasons.* The primary seasons for the Pacific whiting fishery are:

(i) For the Shorebased IFQ Program, Pacific whiting IFQ fishery, the period(s) of the large-scale target fishery is conducted after the season start date;

(ii) For catcher/processors, the period(s) when catching and at-sea processing is allowed for the catcher/processor sector(after the season closes at-sea processing of any fish already on board the processing vessel is allowed to continue); and

(iii) For vessels delivering to motherships, the period(s) when catching and at-sea processing is allowed for the mothership sector (after the season closes, at-sea processing of any fish already on board the processing vessel is allowed to continue).

(2) *Different primary season start dates.* North of 40°30′ N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, and in the Pacific whiting IFQ fishery for vessels delivering to IFQ first receivers north of 42° N. lat. and vessels delivering to IFQ first receivers between 42° and 40°30′ N. lat.

(i) *Procedures.* The primary seasons for the whiting fishery north of 40°30′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

(ii) *Criteria.* The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; the period between when catcher vessels make annual processor obligations and the start of the fishery; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) *Primary whiting season start dates and duration.* After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

(A) Catcher/processor sector—May 15.

(B) Mothership sector—May 15.

(C) Shorebased IFQ program, Pacific whiting IFQ fishery.

(*1*) North of 42° N. lat.— June 15;

(*2*) Between 42° and 40°30′ N. lat.—April 1; and

(*3*) South of 40°30′ N. lat.—April 15.

(3) *Trip limits in the whiting fishery.* The "per trip" limit for whiting before the regular (primary) season for the shorebased sector is announced in Table

1 of this subpart, and is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100–fm (183–m) in the Eureka, CA area. The "per trip" limit for other groundfish species are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

(i) During the groundfish cumulative limit periods both before and after the primary whiting season, vessels may use either small and/or large footrope gear, but are subject to the more restrictive trip limits for those entire cumulative periods.

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or end of the primary whiting season.

(c) *Closed areas.* Vessels fishing in the Pacific whiting primary seasons for the Shorebased IFQ Program, MS Coop Program, or C/P Coop Program shall not target Pacific whiting with midwater trawl gear in the following portions of the fishery management area:

* * * * *

(e) *At-sea processing.* Whiting may not be processed at sea south of 42°00′ N. lat. (Oregon-California border), unless by a waste-processing vessel as authorized under paragraph (g) of this section.

(f) *Time of day.* Vessels fishing in the Pacific whiting primary seasons for the Shorebased IFQ Program, MS Coop Program or C/P Coop Program shall not target Pacific whiting with midwater trawl gear in the fishery management area south of 42°00′ N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′ N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in The Nautical Almanac issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(g) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (g)(1) of this section are met. For purposes of this program, "fishing day" means a 24-hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to fish under in the bycatch reduction program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [**Note:** For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

(1) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows:

(i) All catch must be made available to the observers for sampling before it is sorted by the crew.

(ii) Any retained catch in excess of cumulative trip limits must either be: Converted to meal, mince, or oil products, which may then be sold; or donated to a bona fide tax-exempt hunger relief organization (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief organization immediately upon the request of an authorized officer.

(iii) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(iv) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at *http://www.nwr.noaa.gov.*

(v) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief organization.

(vi) Prohibited species may not be retained.

(vii) Donation of fish to a hunger relief organization must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of "0" or "donation," followed by the name of the hunger relief organization receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief organization or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

* * * * *

22. In § 660.140:

a. Paragraphs (a), (d)(1), (d)(4)(iv), and (d)(5) are revised;

b. Paragraph (i) is removed and paragraphs (j) through (m) are redesignated as paragraphs (i) through (l), and text is added to the newly redesignated paragraphs (i) through (l);

c. Paragraph (c) heading is revised, paragraph (c)(2) is redesignated as paragraph (c)(3) and a new paragraph (c)(2) is added, and the newly redesignated paragraph (c)(3)(vi) is revised; and

d. Paragraphs (b), (c)(3)(vii), (d)(2), (d)(3), and (e) through (h) are added, and paragraph (d)(7) is added and reserved, to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(a) *General.* The Shorebased IFQ Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. The Shorebased IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups (and transferable IBQ for Pacific halibut) and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible participants and will establish a QS account for each QS permit owner

to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account in to the vessel account for the vessel to which the QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. In addition to the requirements of this section, the Shorebased IFQ Program is subject to the following groundfish regulations of subparts C and D:

(1) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish observer program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(2) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(3) The shorebased IFQ fishery may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sector in aggregate or the individual trawl sectors (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) *Participation requirements and responsibilities*—(1) *IFQ vessels.* (i) Vessels must be registered to a groundfish limited entry permit, endorsed for trawl gear with no C/P endorsement.

(ii) To start a trip in the Shorebased IFQ Program, a vessel and its owner(s) (as described on the USCG documentation) must be registered to the same vessel account established by NMFS with no deficit (negative balance) for any species/species group.

(iii) All IFQ species/species group catch (landings and discards) must be covered by QP or IBQ pounds. Any deficit (negative balance in a vessel account) must be cured within 30 days from the date the deficit from that trip is documented in the vessel account, unless the deficit is within the limits of the carryover provision at paragraph (e)(5) of this section, in which case the vessel may declare out of the IFQ fishery for the year in which the deficit occurred and must cure the deficit within 30 days after the issuance of QP or IBQ pounds for the following year.

(iv) Any vessel with a deficit (negative balance) in its vessel account is prohibited from fishing that is within the scope of the Shorebased IFQ Program until sufficient QP or IBQ pounds are transferred in to the vessel account to remove any deficit, regardless of the amount of the deficit.

(v) A vessel account may not have QP or IBQ pounds (used and unused combined) in excess of the QP Vessel Limit in any year, and for species covered by Unused QP Vessel Limit, may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. These amounts are specified at paragraph (e)(4) of this section.

(vi) Vessels must use either trawl gear as specified at § 660.130(b), or a legal non-trawl groundfish gear under the gear switching provisions as specified at § 660.140(k).

(vii) Vessels that are registered to MS/CV endorsed permits may be used to fish in the Shorebased IFQ Program provided that the vessel is registered to a valid Shorebased IFQ Program vessel account.

(viii) In the same calendar year, a vessel registered to a trawl endorsed limited entry permit with no MS/CV or C/P endorsements may be used to fish in the Shorebased IFQ Program if the vessel has a valid vessel account, and to fish in the mothership sector for a permitted MS coop as authorized by the MS coop.

(ix) Vessels that are registered to C/P endorsed permits may not be used to fish in the Shorebased IFQ Program.

(2) *IFQ first receivers.* The IFQ first receiver must:

(i) Ensure that all catch removed from a vessel making an IFQ delivery is weighed on a scale or scales meeting the requirements described in § 660.15(c), subpart C;

(ii) Ensure that all catch is landed, sorted, and weighed in accordance with a valid catch monitoring plan as described in § 660.140(f)(3)(iii), subpart D.

(iii) Ensure that all catch is sorted, prior to first weighing, by species or species groups as specified at § 660.130(d), except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C may weigh catch on a before sorting as described at § 660.140(j)(2).

(iv) Provide uninhibited access to all areas where fish are or may be sorted or weighed to NMFS staff, NMFS-authorized personnel, or authorized officer at any time when a delivery of IFQ species, or the processing of those species, is taking place.

(v) Ensure that each scale produces a complete and accurate printed record of the weight of all catch in a delivery, unless exempted in the NMFS-accepted catch monitoring plan.

(vi) Retain and make available to NMFS staff, NMFS-authorized personnel, or an authorized officer, all printed output from any scale used to weigh catch, and any hand tally sheets, worksheets, or notes used to determine the total weight of any species.

(vii) Ensure that each delivery of IFQ catch is monitored by a catch monitor and that the catch monitor is on site the entire time the delivery is being weighed or sorted.

(viii) Ensure that sorting and weighing is completed prior to catch leaving the area that can be monitored from the observation area.

* * * * *

(c) *IFQ species, management areas, and allocations.* * * *

(2) *IFQ management areas.* A vessel participating in the Shorebased IFQ Program may not fish in more than one IFQ management area during a trip. IFQ management areas are as follows:

(i) Between the U.S./Canada border and 40°10′ N. lat.,

(ii) Between 40°10′ N. lat. and 36° N. lat.,

(iii) Between 36° N. lat. and 34°27′ N. lat., and

(iv) Between 34°27′ N. lat. and the U.S./Mexico border.

* * * * *

(3) * * *

(vi) For each IFQ species, NMFS will determine annual sub-allocations to individual QS accounts by multiplying the percent of QS or IBQ registered to the account by the amount of each

respective IFQ species allocated to the Shorebased IFQ Program for that year. For each IFQ species, NMFS will issue QP or IBQ pounds to the respective QS account in the amount of each sub-allocation determined.

(vii) *Reallocations*—(A) *Reallocation with changes in management areas.*

(*1*) *Area subdivision.* If at any time after the initial allocation, an IFQ species/species group is geographically subdivided, those holding QS for the species/species group being subdivided will receive an amount of QS for each newly created area that is equivalent to the amount they held for the area before it was subdivided.

(*2*) *Area recombination.* When two areas are combined, the QS held by individuals in each area will be adjusted proportionally such that:

(*i*) The total QS for the area sums to 100 percent, and

(*ii*) A person holding QS in the newly created area will receive the same amount of total QP as they would if the areas had not been combined.

(*3*) *Area line movement.* When a management area boundary line is moved, the QS held by individuals in each area will be adjusted proportionally such that they each maintain their same share of the trawl allocation on a coastwide basis (a fishing area may expand or decrease, but the individual's QP for both areas combined wouldn't change because of the change in areas). In order to achieve this end, the holders of QS in the area being reduced will receive QS for the area being expanded, such that the total QP they would be issued will not be reduced as a result of the area reduction. Those holding QS in the area being expanded will have their QS reduced such that the total QP they receive in the year of the line movement will not increase as a result of the expansion (nor will it be reduced).

(B) *Reallocation with subdivision of a species group.* If at any time after the initial allocation an IFQ species group is subdivided, those holding QS for the species group being subdivided will receive an amount of QS for each newly created IFQ species/species group that is equivalent to the amount they held for the species group before it was subdivided. For example, if a person holds one percent of a species group before the subdivision, that person will hold one percent of the QS for each species or species group resulting from the subdivision.

* * * * *

(d) *QS permits and QS accounts*—(1) *General.* In order to obtain QS, a person must apply for a QS permit. NMFS will determine if the applicant is eligible to acquire QS in compliance with the accumulation limits found at paragraph (d)(4) of this section. For those persons that are found to be eligible for a QS permit, NMFS will issue QS and establish a QS account. On or about January 1 each year, QS permit owners will be notified, via the IFQ Web site and their QS account of their QP or IBQ pound allocations, for each of the IFQ species/species groups, for the upcoming fishing year. These updated QS/QP values will reflect the results of: changed OYs, carryover adjustments, and any redistribution of QS (resulting from nonrenewal or permanent revocation of applicable permits, subject to accumulation limits). QS permit owners can monitor the status of their QS and QP allocations throughout the year via the IFQ Web site. QP will be issued to the nearest whole pound using standard rounding rules (*i.e.* decimal amounts from zero up to 0.5 round down and 0.5 up to 1.0 round up), except that initial allocations of QP for overfished species greater than zero but less than one pound will be rounded up to one pound in the first year of the trawl rationalization program. QS owners must transfer their QP from their QS account to a vessel account in order for those QP to be fished. QP must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred). All QP in a QS account must be transferred to a vessel account by September 1 of each year.

(2) *Eligibility and registration*—(i) *Eligibility.* Only the following persons are eligible to own QS permits:

(A) A United States citizen, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities);

(B) A permanent resident alien, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities); or

(C) A corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities). However, there is an exception for any entity that owns a mothership that participated in the west coast groundfish fishery during the allocation period and is eligible to own or control that U.S. fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

(ii) *Registration.* A QS account will be established by NMFS with the issuance of a QS permit. The administrative functions associated with the Shorebased IFQ Program (*e.g.,* account registration, landing transactions, and transfers) are designed to be accomplished online; therefore, a participant must have access to a computer with Internet access and must set up an appropriate QS account to participate. The computer must have Internet browser software installed (*e.g.* Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail initial QS permit owners instructions pertinent to setting up an online QS account. Each IFQ participant must monitor his/her online QS account and all associated messages and comply with all online reporting requirements.

(3) *Renewal, change of permit ownership, and transfer*—(i) *Renewal.* (A) QS permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year. A complete QS permit renewal package must be received by SFD no later than November 30 to be accepted by NMFS.

(B) Notification to renew QS permits will be issued by SFD prior to September 1 each year to the QS permit owner's most recent address in the SFD record. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Any QS permit for which SFD does not receive a QS permit renewal request by November 30 will have its QS account inactivated by NMFS at the end of the calendar year and the QS permit will not be renewed by NMFS for the following year. NMFS will not issue QP or IBQ pounds to the inactivated QS account associated with the non-renewed QS permit. Any QP or IBQ pounds derived from the QS in the inactivated QS account will be redistributed among all other QS permit owners that renewed their permit by the deadline. Redistribution to QS permit owners will be proportional to the QS or IBQ for each IFQ species. A non-renewed QS permit may be renewed in a subsequent year by submission of a complete QS permit renewal package during the permit renewal period for that year.

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required

fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under (d)(4)(iv) of this section, and a complete economic data collection form if required under § 660.114, subpart D. The QS permit renewal will be marked incomplete until the required information is submitted.

(E) *Effective Date.* A QS permit is effective on the date given on the permit and remains in effective until the end of the calendar year.

(F) *IAD and appeals.* QS permit renewals are subject to the permit appeals process specified at § 660.25(g), subpart C.

(ii) *Change of permit ownership and transfer restrictions*—(A) *Restriction on the transfer of ownership for QS permits.* A QS permit cannot be transferred to another individual or entity. The QS permit owner cannot change or add additional individuals or entities as owners of the permit (*i.e.,* cannot change the registered permit owners as given on the permit). Any change to the owner of the QS permit requires the new owner(s) to apply for a QS permit, and is subject to accumulation limits and approval by NMFS.

(B) *Transfer of QS or IBQ.* Transfers of QS or IBQ must be accomplished online via the IFQ Web site. To make a transfer, a QS permit owner must initiate a transfer request by logging onto the IFQ Web site. Following the instructions provided on the Web site, the QS permit owner must enter pertinent information regarding the transfer request including, but not limited to: amount of QS, IBQ, QP or IBQ pounds to be transferred; name and any other identifier of the eligible transferee (*e.g.,* account number); and the value of the transferred QS, IBQ, QP, or IBQ pounds. If the information is not accepted, the online system will send the QS permit owner an electronic message explaining the reason(s). During the year there may be situations where NMFS deems it necessary to prohibit transfers (*i.e.,* account reconciliation, system maintenance, or for emergency fishery management reasons). If the information is accepted, the online system will send the transferee an electronic message regarding the pending transfer. The transferee must approve the transfer by electronic signature. If the transferee approves the transfer, the online system will send a transfer transaction confirmation notice to both the QS permit owner and the vessel account owner confirming the transaction. If the transaction itself is incorrectly recorded, either party can contact the NMFS NWR for instructions on how to request a correction. NMFS will review and make a determination on whether to make a correction based on the request and available information.

(*1*) *Transfer of QS or IBQ between QS accounts.* After the second year of the trawl rationalization program, QS permit owners may transfer QS or IBQ to another QS permit owner, subject to accumulation limits and approval by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (*i.e.,* greater than or equal to 0.001%). QP or IBQ pounds may not be transferred with the QS or IBQ. During the first 2 years after implementation of the program, QS or IBQ cannot be transferred to another QS permit owner, except under U.S. court order and as approved by NMFS. QS or IBQ may not be transferred between December 1 through December 31.

(*2*) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account are subject to vessel accumulation limits and NMFS' approval. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by September 1 each year. Once QP or IBQ pounds are transferred from a QS account to a vessel account, they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account.

(C) *Effective date*—(*1*) Transfer of QS or IBQ between QS accounts is effective on the date approved by NMFS.

(*2*) Transfer of QP or IBQ pounds from a QS account to a vessel account is effective on the date approved by NMFS.

(E) *IAD and appeals.* Transfers are subject to the permit appeals process specified at § 660.25 (g), subpart C.

* * * * *

(4) * * *

(iv) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and that is applying for or renewing a QS permit shall document those persons that have an ownership interest in the limited entry trawl or QS permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. For renewal, if the limited entry trawl permit and QS permit have identical ownership interest, only one form need be submitted attesting to such ownership. SFD will not issue a QS Permit unless the Trawl Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits and is not authorized to do so under paragraph (d)(4)(v) of this section, the person will be notified and the QS permit will be issued up to the accumulation limit specified in the QS Control Limit table from paragraph (d)(4)(i) of this section. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

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(5) *Appeals.* An appeal to a QS permit or QS account action follows the same process as the general permit appeals process is defined at § 660.25(g), subpart C.

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(7) *Cost recovery.* [Reserved]

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(e) *Vessel account*—(1) *General.* QP or IBQ pounds will have the same species/species groups and area designations as the QS or IBQ from which it was issued. Annually, QS or IBQ (expressed as a percent) are converted to QP or IBQ pounds (expressed as a weight) in a QS account. QP or IBQ pounds may only be transferred from a QS account to a vessel account. QP or IBQ pounds are required to cover catch (landings and discards) by limited entry trawl vessels of all IFQ species/species groups, except for:

(i) *Gear exception.* Vessels with a limited entry trawl permit using the following gears would not be required to cover groundfish catch with QP or Pacific halibut catch with IBQ pounds: non-groundfish trawl, gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, salmon troll, crab pot, and limited entry fixed gear when the vessel also has a limited entry permit endorsed for fixed gear and has declared that they are fishing in the limited entry fixed gear fishery.

(ii) *Species exception.* QP are not required for the following species, longspine thornyheads south of 34°27 N. lat., minor nearshore rockfish (north and south), black rockfish (coastwide), California scorpionfish, cabezon, kelp greenling, shortbelly rockfish, and "other fish" (as defined at § 660.11, subpart C, under the definition of "groundfish"). For these species, trip

limits remain in place as specified in the trip limit tables at Table 1 (North) and Table 1 (South) of this subpart.

(2) *Eligibility and registration*—(i) *Eligibility.* To have a registered vessel account, a person must own a vessel and that vessel must be registered to a groundfish limited entry permit endorsed for trawl gear.

(ii) *Registration.* A vessel account must be registered with the NMFS SFD Permits Office. A vessel account may be established at any time during the year. An eligible vessel owner must request in writing that NMFS establish a vessel account. The request must include the vessel name; USCG vessel registration number (as given on USCG Form 1270); all vessel owner names (as given on USCG Form 1270); if the vessel owner is a business entity, then include the name of the authorized vessel account manager that may act on behalf of the entity; business contact information, including: address, phone number, fax number, and e-mail. Applications for a vessel account must also include the following information: a complete economic data collection form as required under § 660.113(b), (c) and (d), subpart D, and a complete Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section. The application for a vessel account will be marked incomplete until the required information is submitted. Any change in the legal name of the vessel owner(s) will require the new owner to register with NMFS for a vessel account.

(3) *Renewal, change of account ownership, and transfer of QP or IBQ pounds*—(i) *Renewal.* (A) Vessel accounts expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year. A complete vessel account renewal package must be received by SFD no later than November 30 to be accepted by NMFS.

(B) Notification to renew vessel accounts will be issued by SFD prior to September 1 each year to the vessel account owner's most recent address in the SFD record. The vessel account owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Any vessel account for which SFD does not receive a vessel account renewal request by November 30 will have its vessel account inactivated by NMFS at the end of the calendar year. NMFS will not issue QP or IBQ pounds to the inactivated vessel account. Any QP or IBQ pounds in the vessel account will expire and surplus QP or IBQ pounds will not be available for carryover. A non-renewed vessel account may be renewed in a subsequent year by submission of a complete vessel account renewal package.

(D) Vessel accounts will not be renewed until SFD has received a complete application for a vessel account renewal, which includes payment of required fees, a complete documentation of permit ownership on the Trawl Identification of Ownership Interest Form as required under (e)(4)(ii) of this section, and a complete economic data collection form as required under § 660.114, subpart D. The vessel account renewal will be marked incomplete until the required information is submitted.

(E) *Effective Date.* A vessel account is effective on the date issued by NMFS and remains effective until the end of the calendar year.

(F) *IAD and appeals.* Vessel account renewals are subject to the appeals process specified at § 660.25 (g), subpart C.

(ii) *Change in vessel account ownership.* Vessel accounts are non-transferable and ownership of a vessel account cannot change. If the owner of a vessel changes, then a new vessel account must be opened.

(iii) *Transfer of QP or IBQ pounds*—(A) *General.* QP or IBQ pounds may only be transferred from a QS account to a vessel account or between vessel accounts. QP or IBQ pounds cannot be transferred from a vessel account to a QS account. QP or IBQ pounds transfers are subject to accumulation limits. QP or IBQ pounds in a vessel account may only be transferred to another vessel account. QP or IBQ pounds must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred).

(B) *Transfer procedures.* QP or IBQ pound transfers from one vessel account to another vessel account must be accomplished online via the IFQ Web site. A vessel account owner must initiate a transfer request by logging onto the IFQ Web site. Following the instructions provided on the Web site, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: Amount of QP or IBQ pounds to be transferred (in whole pound increments); name and any other identifier (*e.g.,* vessel account number) of the eligible vessel account receiving the transfer; and value of the transferred QPs or IBQ pounds. The online system will verify the information entered. If the information is not accepted, the online system will send the both parties an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee receiving the QP or IBQ pounds an electronic message of the pending transfer. The transferee must approve the transfer by electronic signature. If the transferee approves the QP or IBQ pound transfer, the online system will send a transfer transaction confirmation notice to both the vessel account owner that made the transfer and transferee receiving the QP or IBQ pounds. Once this confirmation is received, this transaction is final. If the transaction itself is incorrectly recorded, either party can contact the NMFS NWR for instructions on how to request a correction. NMFS will review and make a determination on whether to make a correction based on the request and available information. QP or IBQ pounds may be transferred to vessel accounts at any time during the year unless otherwise notified by NMFS. During the year there may be situations where NMFS deems it necessary to prohibit transfers because of account reconciliation purposes, system maintenance, or for emergency fishery management reasons.

(4) *Accumulation limits*—(i) *Vessel limits.* Vessel accounts may not have QP or IBQ pounds in excess of the QP Vessel Limit in any year, and for species covered by Unused QP Vessel Limits, may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. These amounts are as follows:

Species category	QP Vessel limit (annual limit) %	Unused QP Vessel limit (daily limit) %
Nonwhiting Groundfish Species	3.2	
Lingcod—coastwide	3.8	
Pacific Cod	20.0	
Pacific whiting (shoreside)	15.0	
Sablefish:		

Species category	QP Vessel limit (annual limit) %	Unused QP Vessel limit (daily limit) %
N. of 36° (Monterey north)	4.5	
S. of 36° (Conception area)	15.0	
PACIFIC OCEAN PERCH	6.0	4.0
WIDOW ROCKFISH [1]	8.5	5.1
CANARY ROCKFISH	10.0	4.4
Chilipepper Rockfish	15.0	
BOCACCIO	15.4	13.2
Splitnose Rockfish	15.0	
Yellowtail Rockfish	7.5	
Shortspine Thornyhead:		
N. of 34°27'	9.0	
S. of 34°27'	9.0	
Longspine Thornyhead:		
N. of 34°27'	9.0	
COWCOD	17.7	17.7
DARKBLOTCHED	6.8	4.5
YELLOWEYE	11.4	5.7
Minor Rockfish North:		
Shelf Species	7.5	
Slope Species	7.5	
Minor Rockfish South:		
Shelf Species	13.5	
Slope Species	9.0	
Dover sole	3.9	
English Sole	7.5	
Petrale Sole	4.5	
Arrowtooth Flounder	20.0	
Starry Flounder	20.0	
Other Flatfish	15.0	
Pacific Halibut	14.4	5.4

[1] If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at 1.5 times the control limit.

(ii) *Trawl identification of ownership interest form.* Any person that owns a vessel registered to a limited entry trawl permit and that is applying for or renewing a vessel account shall document those persons that have an ownership interest in the vessel greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a vessel account unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(5) *Carryover.* The carryover provision allows a limited amount of surplus QP or IBQ pounds in a vessel account to be carried over from one year to the next or allows a deficit in a vessel account in one year to be covered with QP or IBQ pounds from a subsequent year, up to a carryover limit. The carryover limit is calculated by multiplying the carryover percentage by the cumulative total of QP or IBQ pounds (used and unused) in a vessel account for the base year, less any transfers out of the vessel account or any previous carryover amounts. The percentage used for the carryover provision may be changed during the biennial specifications and management measures process.

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ pounds (unused QP or IBQ pounds) for any IFQ species at the end of the fishing year may carryover for use in the immediately following year an amount of unused QP or IBQ pounds up to its carryover limit. The carryover limit for the surplus is calculated as 10 percent of the cumulative total QP or IBQ pounds (used and unused, less any transfers or any previous carryover amounts) in the vessel account at the end of the year. NMFS will credit the carryover amount to the vessel account in the immediately following year. If there is a decline in the OY between the base year and the following year in which the QP or IBQ pounds would be carried over, the carryover amount will be reduced in proportion to the reduction in the OY. Surplus QP or IBQ pounds may not be carried over for more than one year. Any amount of QP or IBQ pounds in a vessel account and in excess of the carryover amount will expire on December 31 each year and will not be available for any future use.

(ii) *Deficit QP or IBQ pounds.* A vessel account with a deficit (negative balance) of QP or IBQ pounds for any IFQ species in the current year may cover that deficit with QP or IBQ pounds from the following year without incurring a violation if the following conditions are met:

(A) The vessel declares out of the shorebased IFQ fishery for the year in which the deficit occurred (If the deficit occurs less than 30 days before the end of the calendar year, then declaring out for the year is not required.);

(B) The amount of QP or IBQ pounds required to cover the deficit from the current fishing year is less than or equal to the vessel's carryover limit for a deficit. The carryover limit for a deficit is calculated as 10 percent of the total cumulative QP or IBQ pounds (used and unused, less any transfers or any previous carryover amounts) in the vessel account 30 days after the date the deficit is documented; and

(C) Sufficient QP or IBQ pounds are transferred in to the vessel account to cure the deficit within 30 days of NMFS' issuance of QP or IBQ pounds to QS accounts in the following year.

(6) *Appeals.* An appeal to a vessel account action follows the appeals process defined at § 660.25(g), subpart C.

(7) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the

vessel accounts consistent with the provisions given at § 660.25(f), subpart C.

(8) *Cost recovery.* [Reserved]

(f) *First receiver site license*—(1) *General.* Any IFQ first receiver that receives IFQ landings must hold a valid first receiver site license. The first receiver site license authorizes the holder to receive, purchase, or take custody, control, or possession of an IFQ landing at a specific physical site onshore directly from a vessel. Once the trawl rationalization program is implemented, a temporary, interim first receiver site license will be available by application to NMFS and will be valid until June 30, 2011, or until an application for a first receiver site license as specified in paragraph (f)(3) of this section is approved by NMFS, whichever comes first. An application for an interim first receiver site license is subject to all of the requirements in this paragraph (f) including the submission of a catch monitoring plan, except that the catch monitoring plan in paragraph (f)(3)(iii) does not have to have been previously accepted by NMFS and the site does not have to have been previously inspected.

(2) *Issuance.* (i) First receiver site licenses will only be issued to a person registered to a valid license issued by the State of Washington, Oregon, or California, and that authorizes the person to receive fish from a catcher vessel.

(ii) A first receiver may apply for a first receiver site license at any time during the calendar year.

(iii) A first receiver site license is valid for one year from the date it was issued by NMFS, or until the State license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first. IFQ first receivers must reapply for a first receiver site license each year and whenever a change in the ownership occurs.

(3) *Application process.* Persons interested in being licensed as an IFQ first receiver must submit a complete application for a first receiver site license. NMFS will only consider complete applications for approval. A complete application includes:

(i) *State license.* A copy of a valid license issued by the State in which they operate which allows the person to receive fish from a catcher vessel.

(ii) *Contact information.* (A) The name of the first receiver,

(B) The physical location of the first receiver, including the street address where the IFQ landings will be received and/or processed.

(C) The name and phone number of the plant manager and any other authorized representative who will serve as a point of contact with NMFS.

(iii) *A NMFS–accepted catch monitoring plan.* All IFQ first receivers must prepare and operate under a NMFS-accepted catch monitoring plan. NMFS will not issue a first receiver site license to a processor that does not have a current, NMFS-accepted catch monitoring plan.

(A) *Catch monitoring plan review process.* NMFS will accept a catch monitoring plan if it meets all the requirements specified in paragraph (f)(3)(iii)(C) of this section. The site must be inspected by NMFS staff or a NMFS designated inspector prior to acceptance to ensure that the first receiver conforms to the elements addressed in the catch monitoring plan. NMFS will complete its review of the catch monitoring plan within 14 working days of receiving a complete catch monitoring plan and conducting a monitoring plan inspection. If NMFS does not accept a catch monitoring plan for any reason, a new or revised catch monitoring plan may be submitted.

(B) *Arranging an inspection.* The time and place of a monitoring plan inspection must be arranged by submitting a written request for an inspection to NMFS at NMFS, Northwest Region, Permits Office, *Attn:* Catch Monitor Coordinator, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will schedule an inspection within ten working days after receiving a complete application for an inspection. The inspection request must include:

(*1*) Name and signature of the person submitting the application and the date of the application;

(*2*) Address, telephone number, fax number, and e-mail address (if available) of the person submitting the application;

(*3*) A proposed catch monitoring plan detailing how the IFQ first receiver will meet each of the performance standards in paragraph (f)(3)(iii)(C) of this section.

(C) *Contents of a catch monitoring plan.* The catch monitoring plan must:

(*1*) *Catch sorting.* Describe the amount and location of all space used for sorting catch, the number of staff assigned to catch sorting, and the maximum rate that catch will flow through the sorting area.

(*2*) *Monitoring for complete sorting.* Detail how IFQ first receiver staff will ensure that sorting is complete; what steps will be taken to prevent unsorted catch from entering the factory or other areas beyond the location where catch sorting and weighing can be monitored from the observation area; and what steps will be taken if unsorted catch enters the factory or other areas beyond the location where catch sorting and weighing can be monitored from the observation area.

(*3*) *Scales used for weighing IFQ landings.* Identify each scale that will be used to weigh IFQ landings by the type and capacity and describe where it is located and what it will be used for. Each scale must be appropriate for its intended use.

(*4*) *Printed record.* Identify all scales that will be used to weigh IFQ landings that cannot produce a complete printed record as specified at § 660.15(c), subpart C. State how the scale will be used, and how the plant intends to produce a complete and accurate record of the total weight of each delivery.

(*5*) *Weight monitoring.* Detail how the IFQ first receiver will ensure that all catch is weighed and the process used to meet the catch weighing requirements specified at paragraph (j) of this section. If a catch monitoring plan proposes the use of totes in which IFQ species will be weighed, or a deduction for the weight of ice, the catch monitoring plan must detail how the process will accurately account for the weight of ice and/or totes.

(*6*) *Delivery points.* Identify specific delivery points where catch is removed from an IFQ vessel. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. If the catch is pumped from the hold of a catcher vessel or a codend, the delivery point will be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(*7*) *Observation area.* Designate and describe the observation area. The observation area is a location where a catch monitor may monitor the flow of fish during a delivery, including: access to the observation area, the flow of fish, and lighting used during periods of limited visibility. Standards for the observation area are specified at paragraph (i)(4)(ii) of this section.

(*8*) *Lockable cabinet.* Identify the location of a secure, dry, and lockable cabinet or locker with the minimum interior dimensions of two feet wide by two feet tall by two feet deep for the exclusive use of the catch monitor, NMFS staff, or authorized officers.

(*9*) *Plant liaison.* Identify the designated plant liaison. The plant liaison responsibilities are specified at paragraph (i)(6) of this section.

(*10*) *First receiver diagram.* The catch monitoring plan must be accompanied by a diagram of the plant showing:

(*i*) The delivery point(s);

(*ii*) The observation area;

(*iii*) The lockable cabinet;

(*iv*) The location of each scale used to weigh catch; and

(*v*) Each location where catch is sorted.

(D) *Catch monitoring plan acceptance period and changes.* NMFS will accept a catch monitoring plan if it meets the performance standards specified in paragraph (f)(3)(iii)(C) of this section. For the first receiver site license to remain in effect through the calendar year, an owner or manager must notify NMFS in writing of any and all changes made in IFQ first receiver operations or layout that do not conform to the catch monitoring plan.

(E) *Changing a NMFS-accepted catch monitoring plan.* An owner and manager may change an accepted catch monitoring plan by submitting a plan addendum to NMFS. NMFS will accept the modified catch monitoring plan if it continues to meet the performance standards specified in paragraph (f)(3)(iii)(C) of this section. Depending on the nature and magnitude of the change requested, NMFS may require an additional catch monitoring plan inspections. A catch monitoring plan addendum must contain:

(*1*) Name and signature of the person submitting the addendum;

(*2*) Address, telephone number, fax number and e-mail address (if available) of the person submitting the addendum;

(*3*) A complete description of the proposed catch monitoring plan change.

(iv) *Completed EDC form.* A first receiver site license application must include a complete economic data collection form as required under § 660.113(b), subpart D. The application for a first receiver site license will be marked incomplete until the required information is submitted.

(4) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a first receiver site license. If disapproved, the IAD will provide the reasons for this determination.

(5) *Effective date.* The first receiver site license is effective upon approval and issuance by NMFS and will be effective for one year from the date of NMFS issuance.

(6) *Reissuance in subsequent years.* Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire one year from the date of NMFS issuance of the license. The first receiver will not be authorized to receive or process groundfish IFQ species if their first receiver site license has expired.

(7) *Change in ownership of an IFQ first receiver.* If there are any changes to the owner of a first receiver registered to a first receiver site license during a calendar year, the first receiver site license is void. The new owner of the first receiver must apply to NMFS for a first receiver site license. A first receiver site license is not transferrable by the license holder to any other person.

(8) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with processing the application consistent with the provisions given at § 660.25(f), subpart C.

(9) *Appeals.* If NMFS does not accept the first receiver site license application through an IAD, the applicant may appeal the IAD consistent with the general permit appeals process defined at § 660.25(g), subpart C.

(g) *Retention requirements (whiting and non-whiting vessels)*—(1) *Non-whiting vessels.* Vessels participating in the Shoreside IFQ Program other than vessels participating in the Pacific whiting IFQ fishery (non-whiting vessels) may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. Non-whiting vessels must discard Pacific halibut and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-whiting vessels may discard non-IFQ species and non-groundfish species. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer.

(2) *Whiting maximized retention vessels.* Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species.

(3) *Whiting vessels sorting at-sea.* Vessels participating in the Pacific whiting IFQ fishery that sort their catch at sea (whiting vessels sorting at-sea) may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. Whiting vessels sorting at sea must discard Pacific halibut and such discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Whiting vessels sorting at-sea may discard non-IFQ species and non-groundfish species. The sorting of catch, weighing and discarding of any IFQ or IBQ species must be monitored by the observer.

(h) *Observer requirements*—(1) *Coverage requirements.* (i) Any vessel participating in the Shorebased IFQ Program must carry a NMFS-certified observer during any trip until all fish from that trip have been offloaded. If a vessel delivers fish from an IFQ trip to more than one IFQ first receiver, the observer must remain onboard the vessel during any transit between delivery points.

(ii) *The observer deployment limitations and workload.* Observer must not be deployed for more than 22 calendar days in a calendar month. The observer program may issue waivers to allow observers to work more than 22 calendar days per month when it's anticipated one trip will last over 20 days or for issues with observer availability due to illness or injury of other observers.

(A) If an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer.

(B) [Reserved]

(iii) Any boarding refusal on the part of the observer or vessel is immediately reported to the observer program and NOAA OLE by the observer provider. The observer must be available for an interview with the observer program or NOAA OLE if necessary.

(2) *Vessel responsibilities*—(i) *Accommodations and food.* (A) Accommodations and food for trips less than 24 hours must be equivalent to those provided for the crew.

(B) Accommodations and food for trips of 24 hours or more must be equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or their designee.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, statutes, and guidelines pertaining to safe operation of the vessel, including, but not limited to rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel to return to

port if operated in an unsafe manner or if unsafe conditions are identified.

(B) Have on board: A valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software.* [Reserved]

(iv) *Vessel position.* Allow observer(s) access to the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working deck, holding bins, sorting areas, cargo hold, and any other space that may be used to hold, process, weigh, or store fish at any time.

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board to allow sampling the catch.

(vii) *Records.* Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(viii) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing a designated working area on deck for the observer(s) to collect, sort and store catch samples.

(C) Collecting samples of catch.

(D) Collecting and carrying baskets of fish.

(E) Allowing the observer(s) to collect biological data and samples.

(F) Providing adequate space for storage of biological samples.

(G) Providing time between hauls to sample and record all catch.

(H) Sorting retained and discarded catch into quota pound groupings.

(I) Stowing all catch from a haul before the next haul is brought aboard.

(ix) *Sampling station.* To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that is:

(A) *Accessible.* The observer sampling station must be available to the observer at all times.

(B) *Limits hazards.* To the extent possible, the area should be free and clear of hazards including, but not limited to, moving fishing gear, stored fishing gear, inclement weather conditions, and open hatches.

(x) *Transfers at sea.* Transfers at-sea are prohibited.

(3) *Procurement of observer services*—(i) Owners of vessels required to carry observers under paragraph (a)(1) of this section must arrange for observer services from a permitted observer provider, except that:

(A) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(B) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(ii) [Reserved]

(4) *Application to become an observer provider.* Any observer provider holding a valid permit issued by the North Pacific observer program in 2010 can supply observer services to the west coast trawl fishery and will be issued a West Coast Groundfish Observer Program permit.

(5) *Observer provider responsibilities.* Observer providers must:

(i) *Provide qualified candidates to serve as observers.*

(A) To be qualified, a candidate must have:

(*1*) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(*2*) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(*3*) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(*4*) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Prior to hiring an observer candidate,* the observer provider must:

(A) Provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties, for example, the West Coast Groundfish Observer Program's sampling manual. Observer job information is available from the Observer Program Office's Web site at *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm.*

(B) For each observer employed by an observer provider, have a written contract or a written contract addendum signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*1*) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office as specified by the Observer Program instructions;

(*2*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties; and

(*3*) That every observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the NMFS West Coast Groundfish Observer Training class.

(iii) *Ensure that observers complete duties in a timely manner.* Observer providers must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(A) Submit to NMFS all data, logbooks and reports and biological samples as required under the observer program policy deadlines.

(B) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(C) Return all sampling and safety gear to the Observer Program Office at the termination of their contract.

(iv) *Observers provided to vessel.*

(A) Must have a valid West Coast Groundfish observer certification;

(B) Must not have informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (h)(5)(xi)(B) of this section that would prevent him or her from performing his or her assigned duties; and

(C) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage under paragraphs (h)(5)(xi)(D) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the

provider is in a contractual relationship due to the lack of available observers by the estimated embarking time of the vessel, the provider must report it to NMFS at least 4 hours prior to the vessel's estimated embarking time.

(vi) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vii) *Provide observer deployment logistics.* (A) An observer provider must ensure each of its observers under contract:

(*1*) Has an individually assigned mobile or cell phones, in working order, for all necessary communication. An observer provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(*2*) Calls into the NMFS deployment hotline upon departing and arriving into port for each trip to leave the following information: observer name, phone number, vessel departing on, expected trip end date and time.

(*3*) Remains available to NOAA Office for Law Enforcement and the Observer Program until the conclusion of debriefing.

(*4*) Receives all necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(*5*) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*i*) An observer under contract may be housed on a vessel to which he or she is assigned: prior to their vessel's initial departure from port; for a period not to exceed twenty-four hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(*ii*) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(*iii*) Otherwise, each observer between vessels, while still under contract with a permitted observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Observer deployment limitations and workload.* (A) Not deploy an observer on the same vessel more than 90 calendar days in a 12-month period, unless otherwise authorized by NMFS.

(B) Not exceed observer deployment limitations and workload as outlined in paragraph (h)(1)(ii) of this section.

(ix) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (h)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(x) *Maintain communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(xi) *Maintain communications with the observer program office.* An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 7 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(*1*) Training registration materials consist of the following:

(*i*) Date of requested training;

(*ii*) A list of observer candidates that includes each candidate's full name (*i.e.,* first, middle and last names), date of birth, and gender;

(*iii*) A copy of each candidate's academic transcripts and resume;

(*iv*) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions;

(*v*) Projected observer assignments. Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and

(*vi*) Length of observers contract.

(*2*) Briefing registration materials consist of the following:

(*i*) Date and type of requested briefing session;

(*ii*) List of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names);

(*iii*) Projected observer assignments. Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and

(*iv*) Length of observer contract.

(*3*) *Debriefing.* The West Coast Groundfish Observer Program will notify the observer provider which observers require debriefing and the specific time period the provider has to schedule a date, time, and location for debriefing. The observer provider must contact the West Coast Groundfish Observer program within 5 business days by telephone to schedule debriefings.

(*i*) Observer providers must immediately notify the observer program when observers end their contract earlier than anticipated.

(*ii*) [Reserved]

(B) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the

dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(C) *Certificates of insurance.* Copies of "certificates of insurance", that names the NMFS Observer Program leader as the "certificate holder", shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(*1*) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*2*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*3*) States Worker's Compensation as required.

(*4*) Commercial General Liability.

(D) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (h)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via e-mail, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*1*) Vessels required to have observer coverage as specified at paragraph (h)(1)(i) of this section; and

(*2*) Observers.

(E) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program office any change of management or contact information submitted on the provider's permit application under paragraphs (h)(4) of this section within 30 days of the effective date of such change.

(F) *Biological samples.* The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.

(G) *Observer status report.* Each Tuesday, observer providers must provide NMFS with an updated list of contact information for all observers that includes the observer's name, mailing address, e-mail address, phone numbers, port of embarkation ("home port"), fishery deployed the previous week and whether or not the observer is "in service", indicating when the observer has requested leave and/or is not currently working for the provider.

(H) Providers must submit to NMFS, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, *etc.*

(I) *Other reports.* Reports of the following must be submitted in writing to the West Coast Groundfish Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under § 660.112 or § 600.725(o), (t) and (u);

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7);

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Must meet limitations on conflict of interest.* Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in the North Pacific or Pacific coast fishery managed under an FMP for the waters off the coasts of Alaska, Washington, Oregon, and California, including, but not limited to,

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, or shoreside processors facility involved in the catching, taking, harvesting or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(*3*) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS in the Pacific coast or North Pacific regions, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Must develop and maintain a policy addressing observer conduct and behavior* for their employees that serve as observers.

(A) The policy shall address the following behavior and conduct regarding:

(*1*) Observer use of alcohol;

(*2*) Observer use, possession, or distribution of illegal drugs and;

(*3*) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(B) An observer provider shall provide a copy of its conduct and behavior policy to each observer candidate and to the Observer Program by February 1 of each year.

(xvi) *Refuse to deploy an observer* on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification requirements as designated under paragraph (h)(6)(iii) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements*—(A) *Initial certification.* NMFS may certify individuals who, in addition to any other relevant considerations:

(*1*) Are employed by an observer provider company permitted pursuant to § 660.140(h) at the time of the issuance of the certification;

(*2*) Have provided, through their observer provider:

(*i*) Information identified by NMFS at § 660.140(h) regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer candidate education and health standards as specified in § 660.140(h); and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the West Coast Groundfish Observer Program.

(B) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(C) Have not been decertified under paragraph (h)(6)(ix) of this section.

(iv) *Denial of Certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(v) *Issuance of an observer certification.* An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified at paragraph (h)(6)(iii) of this section. The following endorsements must be obtained in addition to observer certification, in order for an observer deploy.

(A) *West Coast Groundfish Observer Program training certification endorsement.* A training certification endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the observer Program office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing training once more.

(B) *West Coast Groundfish Observer Program annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a training certification endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment after their certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all briefing requirements, when applicable. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(vi) *Maintaining the validity of an observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(D) Successfully complete NMFS-approved annual briefings as prescribed by the West Coast Groundfish Observer Program.

(E) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(F) Hold current basic cardiopulmonary resuscitation/first aid certification as per American Red Cross Standards.

(G) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(H) Submit all data and information required by the observer program within the program's stated guidelines.

(I) Meet the minimum annual deployment period of 3 months at least once every 12 months.

[Alternative 1 for Paragraph (h)(6)(vii) (Council-Deemed)]

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest in the vessels on which the observers are stationed or in the first receivers to which those vessels make deliveries, other than the provision of observer services.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based processor owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

[Alternative 2 for Paragraph (h)(6)(vii) (NMFS-Proposed)]

(vii) Limitations on conflict of interest. Observers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(*3*) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.* Observers must:

(A) Perform their duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Report to the Observer Program office and the NOAA OLE any time they refuse to board a vessel.

(C) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to the conservation of marine resources of their environment.

(D) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification*—(A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension and decertification official may initiate suspension or decertification proceedings against an observer:

(*1*) When it is alleged that the observer has not met applicable standards, including any of the following:

(*i*) Failed to satisfactorily perform duties as described or directed by the observer program; or

(*ii*) Failed to abide by the standards of conduct for observers, including conflicts of interest;

(*2*) Upon conviction of a crime or upon entry of a civil judgment for:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*iii*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal within 30 of issuance of the IAD to the Office of Administrative Appeals pursuant to § 679.43.

(i) *Catch monitor requirements for IFQ first receivers*—(1) *Catch monitor coverage requirements.* A catch monitor is required be present at each IFQ first receiver whenever an IFQ landing is received, unless the first receiver has been granted a written waiver from the catch monitor requirements by NMFS.

(2) *Procurement of catch monitor services.* Owners or managers of each IFQ first receiver must arrange for catch monitor services from a certified catch monitor provider prior to accepting IFQ landings. IFQ first receivers are responsible for all associated costs including training time, debriefing time, and lodging while deployed.

(3) *Catch monitor safety.* (i) Each IFQ first receiver must adhere to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of a processing and/or receiving facility.

(ii) The working hours of each individual catch monitor will be limited as follows:

(A) An individual catch monitor shall not be required or permitted to work more than 16 hours per calendar day, with maximum of 14 hours being work other than the summary and submission of catch monitor data.

(B) Following monitoring shift of more than 10 hours, each catch monitor must be provided with a minimum 6 hours break before they may resume monitoring.

(4) *Catch monitor access.* (i) Each IFQ first receiver must allow catch monitors free and unobstructed access to the catch throughout the sorting process and the weighing process.

(ii) The IFQ first receiver must ensure that there is an observation area available to the catch monitor that meets the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to NMFS staff, NMFS-authorized personnel, or authorized officers at any time a valid catch monitoring plan is required.

(B) *Monitoring the flow of fish.* The catch monitor must have an unobstructed view or otherwise be able to monitor the entire flow of fish between the delivery point and a location where all sorting has takes place and each species has been weighed.

(C) *Adequate lighting.* Adequate lighting must be provided during periods of limited visibility.

(iii) Each IFQ first receiver must allow catch monitors free and unobstructed access to any documentation required

by regulation including fish tickets, scale printouts and scale test results.

(iv) Each IFQ first receiver must provide the catch monitors free and unobstructed access to a telephone line during the hours that Pacific whiting is being processed at the facility and 30 minutes after the processing of the last delivery each day.

(5) *Lockable cabinet.* Each IFQ first receiver must provide a secure, dry, and lockable cabinet or locker with the minimum interior dimensions of two feet wide by two feet tall by two feet deep for the exclusive use the catch monitor and NMFS staff or NMFS-authorized agents.

(6) *Plant liaison for the catch monitor.* Each IFQ first receiver must designate a plant liaison. The plant liaison is responsible for:

(i) Orienting new catch monitors to the facility;

(ii) Assisting in the resolution of catch monitoring concerns; and

(iii) Informing NMFS if changes must be made to the catch monitoring plan.

(7) *Reasonable assistance.* Each IFQ first receiver must provide reasonable assistance to the catch monitors to enable each catch monitor to carry out his or her duties. Reasonable assistance includes, but is not limited to: Informing the monitor when bycatch species will be weighed, and providing a secure place to store equipment and gear.

(j) *Catch weighing requirements*—(1) *Catch monitoring plan.* All first receivers must operate under a NMFS-accepted catch monitoring plan.

(2) *Sorting and weighing IFQ landings*—(i) *Approved scales.* The owner of an IFQ first receiver must ensure that all IFQ species received from a vessel making an IFQ landing are weighed on a scale(s) that meets the requirements specified at § 660.15(c).

(ii) *Printed record.* All scales identified in the catch monitoring plan accepted by NMFS during the first receiver site license application process, must produce a printed record for each delivery, or portion of a delivery, weighed on that scale, with the following exception: If approved by NMFS as part of the catch monitoring plan, scales not designed for automatic bulk weighing may be exempted from part or all of the printed record requirements. The printed record must include:

(A) The first receiver's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each landing, or portion of the landing that was weighed on that scale;

(D) The date the information is printed; and

(E) The name and vessel registration or documentation number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of printing.

(iii) *Scales that may be exempt from printed report.* An IFQ first receiver that receives no more than 200,000 pounds of groundfish in any calendar month will be exempt from the requirement to produce a printed record provided that:

(A) The first receiver has not previously operated under a catch monitoring plan where a printed record was required;

(B) The first receiver ensures that all catch is weighed; and

(C) The catch monitor, NMFS staff, or authorized officer can verify that all catch is weighed.

(iv) *Retention of printed records.* An IFQ first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by NMFS staff or an authorized officer for 3 years after the end of the fishing year during which the printout was made.

(v) *Weight monitoring.* An IFQ first receiver must ensure that it is possible for the catch monitor, NMFS staff, or authorized officer to verify the weighing of all catch.

(vi) *Catch sorting.* All fish delivered to the plant must be sorted and weighed by species as specified at § 660.130(d).

(vii) *Complete sorting.* Sorting and weighing must be completed prior to catch leaving the area that can be monitored from the catch monitor's observation area.

(viii) *Pacific whiting.* For Pacific Whiting taken with midwater trawl gear, IFQ first receivers may use an in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified at § 660.130(d) and all incidental catch (groundfish and non groundfish species) must be accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

(ix) For all other IFQ landings the following weighing standards apply:

(A) A belt or automatic hopper scale may be used to weigh all of the catch prior to sorting. All but a single predominant species must then be reweighed.

(B) An in-line conveyor or automatic hopper scale may be used to weigh the predominant species after catch has been sorted. Other species must be weighed in a manner that facilitates tracking of the weights of those species.

(C) IFQ species or species group may be weighed in totes on a platform scale capable of printing a label or tag and recording the label or tag information to memory for printing a report as specified at § 660.15. The label or tag must remain affixed to the tote until the tote is emptied. The label or tag must show the following information:

(*1*) The species or species group;

(*2*) The weight of the fish in the tote;

(*3*) The date the label or tag was printed; and

(*4*) The vessel name.

(D) *Totes and ice.* If a catch monitoring plan proposes the use of totes in which fish will be weighed, or a deduction for the weight of ice, the deduction must be accurately accounted for. No deduction may be made for the weight of water or slime. This standard may be met by:

(*1*) Taring the empty or pre-iced tote on the scale prior to filling with fish;

(*2*) Labeling each tote with an individual tare weight. This weight must be accurate within 500 grams (1 pound if scale is denominated in pounds) for any given tote and the average error for all totes may not exceed 200 grams (8 ounces for scales denominated in pounds);

(*3*) An alternate approach approved by NMFS. NMFS will only approve approaches that do not involve the estimation of the weight of ice or the weight of totes and allow NMFS staff or an authorized officer to verify that the deduction or tare weight is accurate.

(E) An alternate approach accepted by NMFS in the catch monitoring plan.

(3) *IFQ first receiver responsibilities relative to catch weighing and monitoring of catch weighing.* The owner of an IFQ first receiver must:

(i) *General.* (A) Ensure that all IFQ landings are sorted and weighed as specified at § 660.130(d) and in accordance with an approved catch monitoring plan.

(ii) *Catch monitors, NMFS staff, and authorized officers.* (A) Have a catch monitor on site the entire time an IFQ landing is being offloaded, sorted, or weighed.

(B) Notify the catch monitor of the offloading schedule.

(C) Provide catch monitors, NMFS staff, or an authorized officer with unobstructed access to any areas where IFQ species are or may be sorted or weighed at any time IFQ species are being landed or processed.

(D) Allow catch monitors, NMFS staff, or an authorized officer to observe the

weighing of catch on the scale and to read the scale display at any time.

(E) Ensure that printouts of the scale weight of each delivery or offload are made available to catch monitors, NMFS staff, or an authorized officer at the time printouts are generated.

(4) *Scale tests.* (i) All testing must meet the scale test standards specified at § 660.15(c).

(ii) *Inseason scale testing.* First receivers must allow, and provide reasonable assistance to a catch monitor, NMFS staff or an authorized officer to test scales used to weigh IFQ catch. A scale that does not pass an inseason test may not be used to weigh IFQ catch until the scale passes an inseason test or is approved for continued use by the weights and measures authorities of the State in which the scale is located.

(k) *Gear switching.* (1) Participants in the Shorebased IFQ Program may take IFQ species using any legal groundfish non-trawl gear (*i.e.,* gear switching) and are exempt from the gear endorsements at § 660.25(b)(3) for limited entry fixed gear permits, provided the following requirements are met:

(i) The vessel must be registered to a limited entry trawl permit.

(ii) The vessel must be registered to a vessel account that is not in deficit on any IFQ species.

(iii) The vessel operator must have submitted a valid gear declaration for the trip that declares "Limited entry groundfish non-trawl, shorebased IFQ," as specified in § 660.13(d)(5)(iv)(A), and does not declare any other designation (a Shorebased IFQ Program trip may not be combined with any other designation).

(iv) The vessel must comply with prohibitions applicable to limited entry fixed gear fishery as specified at § 660.212, gear restrictions applicable to limited entry fixed gear as specified in §§ 660.219 and 660.230(b), and management measures specified in § 660.230(d), including restrictions on the fixed gear allowed onboard, its usage, and applicable fixed gear groundfish conservation area restrictions, except that the vessel will not be subject to limited entry fixed gear trip limits when fishing in the Shorebased IFQ Program.

(v) The vessel must comply with the limited entry trawl trip limits for species/species groups not covered under the Shorebased IFQ Program or whiting trip limits outside the primary season.

(vi) The vessel must comply with recordkeeping and reporting requirements applicable to limited entry trawl gear as specified in § 660.113.

(vii) The vessel must comply with and observer requirements and all other provisions of the Shoreside IFQ Program as specified in this section.

(2) [Reserved]

(l) *Adaptive management program*—(1) *General.* The adaptive management program (AMP) is a set-aside of 10 percent of the non-whiting QS to address the following objectives:

(i) Community stability;

(ii) Processor stability;

(iii) Conservation;

(iv) Unintended/unforeseen consequences of IFQ management; or

(v) Facilitating new entrants.

(2) *Years one and two.* The 10 percent of non-whiting QS will be reserved for the AMP during years one and two of the Shorebased IFQ Program, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS during years one and two.

23. In § 660.150;

a. Paragraph (g)(1) introductory text is revised, and paragraph (g)(1)(v) is removed;

b. Paragraph (a) introductory text and paragraphs (a)(3), (a)(4), (d), (f)(3), and (g)(3)(i)(C) are revised;

c. Paragraphs (b), (c), (e), (f)(2), (f)(4), (g)(1)(iv), (g)(2), (g)(3)(ii), (g)(4), and (h) through (k) are added; and

d. Paragraph (l) is removed to read as follows:

§ 660.150 Mothership (MS) Coop Program.

(a) *General.* The MS Coop Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (f)(3), (f)(5), (f)(6), (g)(3), (g)(5), and (g)(6) of this section, which are effective immediately. The MS Coop Program is a general term to describe the limited access program that applies to eligible harvesters and processors in the mothership sector of the Pacific whiting at-sea trawl fishery. Eligible harvesters and processors, including coop and non-coop fishery participants, must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. Each year a vessel registered to a MS/CV-endorsed permit may fish in either the coop or non-coop portion of the MS Coop Program, but not both. In addition to the requirements of this section, the MS Coop Program is subject to the following groundfish regulations of subparts C and D:

* * * * *

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) *Participation requirements and responsibilities*—(1) *Mothership vessels.* (i) *Mothership vessel participation requirements.* A vessel is eligible to receive and process catch as a mothership in the MS Coop Program if:

(A) The vessel is registered to a MS permit;

(B) The vessel is not used to fish as a catcher vessel in the mothership sector of the Pacific whiting fishery in the same calendar year; and

(C) The vessel is not used to fish as a C/P in the Pacific whiting fishery in the same calendar year.

(ii) *Mothership vessel responsibilities.* The owner and operator of a mothership vessel must:

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d), subpart C; and, maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, and cease fishing reports.

(B) *Observers.* As specified at paragraph (j) of this section, procure observer services, maintain the appropriate level of coverage, and meet the vessel responsibilities.

(C) *Catch weighing requirements.* The owner and operator of a MS vessel must:

(*1*) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in section § 660.15(b), subpart C;

(*2*) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in section § 660.15(b), subpart C.

(2) *Mothership catcher vessels*—(i) *Mothership catcher vessel participation requirements*—(A) A vessel is eligible to harvest in the MS Coop Program if the following conditions are met:

(*1*) If the vessel is used to fish as a mothership catcher vessel for a permitted MS coop, the vessel is

registered to a limited entry permit with a trawl endorsement and NMFS has been notified that the vessel is authorized to fish for the coop.

(*2*) If the vessel is used to harvest fish in the non-coop fishery, the vessel is registered to a MS/CV endorsed limited entry permit.

(*3*) The vessel is not used to harvest fish or process as a mothership or catcher/processor vessel in the same calendar year.

(*4*) The vessel does not catch more than 30 percent of the Pacific whiting allocation for the mothership sector.

(B) [Reserved]

(ii) *Mothership catcher vessel responsibilities*—(A) *Observers.* As specified at paragraph (j) of this section, procure observer services, maintain the appropriate level of coverage, and meet the vessel responsibilities.

(B) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d), subpart C; and, maintain and submit all records and reports specified at § 660.113(c) including, economic data and scale tests records, if applicable.

(3) *MS coops*—(i) *MS coop participation requirements.* For a MS coop to participate in the Pacific whiting mothership sector fishery it must:

(A) Be issued a MS coop permit;

(B) Be composed of MS/CV endorsed limited entry permit owners;

(C) Be formed voluntarily;

(D) Be a legally recognized entity that represents its members;

(E) Designate an individual as a coop manager; and

(F) Include at least 20 percent of all MS/CV endorsed permits as members. The coop membership percentage will be interpreted by rounding to the nearest whole permit (*i.e.* zero up to 0.5 rounds down and 0.5 up to 1.0 rounds up).

(ii) *MS coop responsibilities.* A MS coop is responsible for:

(A) Applying for and being registered to a MS coop permit;

(B) Organizing and coordinating harvest activities of vessels authorized to fish for the coop;

(C) Reassigning catch history assignments for use by coop members;

(D) Organizing and coordinating the transfer and leasing of catch allocations with other permitted coops through inter-coop agreements;

(E) Monitoring harvest activities and enforcing the catch limits of coop members;

(F) Submitting an annual report.

(G) Having a designated coop manager. The designated coop manager must:

(*1*) Serve as the contact person between NMFS, the Council, and other coops;

(*2*) Be responsible for the annual distribution of catch and bycatch allocations among coop members;

(*3*) Oversee reassignment of catch allocations within the coop;

(*4*) Oversee inter-coop catch allocation reassignments;

(*5*) Prepare and submit an annual report on behalf of the coop;

(*6*) Be authorized to receive or respond to any legal process in which the coop is involved; and

(*7*) Notify NMFS if the coop dissolves.

(iii) *MS coop compliance and joint/several liability.* An MS coop must comply with the provisions of this section. The MS coop, member limited entry permit owners, and owners and operators of vessels registered to member limited entry permits, are jointly and severally responsible for compliance with the provisions of this section. Pursuant to 15 CFR part 904, each MS coop, member permit owner, and owner and operator of a vessel registered to a coop member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, an MS coop is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

(c) *MS Coop Program species and allocations*—(1) *MS Coop Program species.* MS Coop Program species are as follows:

(i) Species with formal allocations to the MS Coop Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Coop Programs combined, as described in Tables 1d and 2d, subpart C.

(2) *Annual mothership sector sub-allocations.* Annual allocation amount(s) will be determined using the following procedure:

(i) *MS/CV catch history assignments.* Catch history assignments will be based on catch history using the following methodology:

(A) *Pacific whiting catch history assignment.* For each MS/CV endorsed limited entry permit, the permit's entire catch history assignment of Pacific whiting will be annually allocated to a single permitted MS coop or to the non-coop fishery. A MS/CV endorsed permit owner cannot divide the permit's catch history assignment between more than one MS coop or between a coop and the non-coop fishery for that year. Once assigned to a permitted MS coop or to the non-coop fishery, the permit's catch history assignment remains with that permitted MS coop or non-coop fishery for that calendar year. When the mothership sector allocation is established through the final Pacific whiting specifications, the information for the conversion of catch history assignment to pounds will be made available to the public through a **Federal Register** announcement and/or public notice and/or the NMFS Web site. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (*i.e.* zero up to 0.5 rounds down and 0.5 up to 1.0 rounds up).

(B) *Non-whiting groundfish species catch*—(*1*) Non-whiting groundfish species with a mothership sector allocation will be divided annually between the permitted coops and the non-coop fishery. The pounds associated with each permitted MS coop will be provided when the coop permit is issued.

(*2*) Groundfish species with at-sea sector set-asides will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(*3*) Groundfish species not addressed in paragraph (*1*) or (*2*) above, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken.

(*4*) *Halibut set-asides.* Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10′ N lat.

(ii) *Annual coop allocations*—(A) *Pacific whiting.* Each permitted MS coop is authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each member MS/CV endorsed permit identified in the NMFS-accepted coop agreement for a given calendar year. Other limited entry permits registered to vessels that will fish for the coop do not bring catch allocation to a permitted MS coop.

(B) *Non-whiting groundfish with allocations.* Sub-allocations of non-whiting groundfish species with allocations to permitted MS coops will be in proportion to the Pacific whiting

catch history assignments assigned to each permitted MS coop.

(iii) *Annual non-coop allocation*—(A) *Pacific whiting.* The non-coop whiting fishery is authorized to harvest a quantity of Pacific whiting that is remaining in the mothership sector annual allocation after the deduction of all coop allocations.

(B) *Non-whiting groundfish with allocations.* The sub-allocation to the non-coop fishery will be in proportion to the mothership catcher vessel Pacific whiting catch history assignments for the non-coop fishery.

(C) *Announcement of the non-coop fishery allocations.* Information on the amount of Pacific whiting and non-whiting groundfish with allocations that will be made available to the non-coop fishery when the final Pacific whiting specifications for the mothership sector is established and will be announced to the public through a **Federal Register** announcement and/or public notice and/or the NMFS Web site.

(3) *Reaching an allocation or sub-allocation.* When the mothership sector Pacific whiting allocation, Pacific whiting sub-allocation, or non-whiting groundfish catch allocation is reached or is projected to be reached, the following action may be taken:

(i) Further harvesting, receiving or at-sea processing by a mothership or catcher vessel in the mothership sector is prohibited when the mothership sector Pacific whiting allocation or non-whiting groundfish allocation is projected to be reached. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a mothership may continue to process catch that was on board before at-sea processing was prohibited. Pacific whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(ii) When a permitted MS coop sub-allocation of Pacific whiting or non-whiting groundfish species is reached, further harvesting or receiving of groundfish by vessels fishing in the permitted MS coop must cease, unless the permitted MS coop is operating under an NMFS-accepted inter-coop agreement.

(iii) When the non-coop fishery sub-allocation of Pacific whiting or non-whiting groundfish species is projected to be reached, further harvesting or receiving of groundfish by vessels fishing in under the non-coop fishery must cease.

(4) *Non-whiting groundfish species reapportionment.* This paragraph describes the process for reapportioning non-whiting groundfish species with allocations between permitted MS coops and the catcher/processor sector. Reapportionment of mothership sector allocations to the catcher/processor will not occur until all permitted MS coops and the non-coop fishery have been closed by NMFS or have informed NMFS that they have ceased operations for the remainder of the calendar year.

(i) *Within the mothership sector.* The Regional Administrator may make available for harvest to permitted coops and the non-coop fishery that have not notified NMFS that they have ceased fishing for the year, the amounts of a permitted MS coop's non-whiting catch allocation remaining when a coop reaches its Pacific whiting allocation or when the designated coop manager notifies NMFS that a permitted coop has ceased fishing for the year. The reapportioned allocations will be in proportion to their original allocations.

(ii) *Between the mothership and catcher/processor sectors.* The Regional Administrator may make available for harvest to the catcher/processor sector of the Pacific whiting fishery, the amounts of the mothership sector's non-whiting catch allocation remaining when the Pacific whiting allocation is reached or participants in the sector do not intend to harvest the remaining allocation. The designated coop manager, or in the case of an inter-coop, all of the designated coop managers must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year. At any time after greater than 80 percent of the Mothership sector Pacific whiting allocation has been harvested, the Regional Administrator may contact designated coop managers to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take in to consideration the best available data on total projected fishing impacts. Reapportionment between permitted MS coops and the non-coop fishery within the mothership sector will be in proportion to their original coop allocations for the calendar year.

(iii) *Set-aside species.* No inseason management actions are associated with set asides.

(5) *Announcements.* The Regional Administrator will announce in the **Federal Register** when the mothership sector or the allocation of Pacific whiting or non-whiting groundfish with an allocation is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting, or reapportionment of non-whiting groundfish with allocations may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter.

(6) *Redistribution of annual allocation*—(i) *Between permitted MS coops (inter-coop).* (A) Through an inter-coop agreement, the designated coop managers of permitted MS coops may distribute Pacific whiting and non-whiting groundfish allocations among one or more permitted MS coops, provided the processor obligations at paragraph (c)(7) of this section have been met or a mutual agreement exception at paragraph (c)(7)(iv) of this section has been submitted to NMFS.

(B) In the case of a MS coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

(ii) *Between the MS coop and non-coop fisheries.* Pacific whiting may not be redistributed between the coop and non-coop fisheries.

(ii) *Between Pacific whiting sectors.* Pacific whiting may not be redistributed between the mothership sector and catcher/processor sector. Whiting may not be redistributed to the Shorebased IFQ Program.

(7) *Processor obligation and mutual agreement exceptions*—(i) *Processor obligation.* Through the annual MS/CV endorsed limited entry permit renewal process, the MS/CV endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated (the obligation may not be split among MS permits).

(ii) *Expiration of a processor obligation.* Processor obligations expire at the end of each calendar year when the MS Coop Permit expires.

(iii) *Processor obligation when MS coop allocation is redistributed.* When a permitted MS coop redistributes Pacific whiting allocation within the permitted

MS coop or from one permitted MS coop to another permitted MS coop through an inter-coop agreement, such allocations must be delivered to the mothership registered to the MS permit to which the allocation was obligated under the processor obligation submitted to NMFS, unless a mutual agreement exception has been submitted to NMFS.

(iv) *Mutual agreement exception.* A MS/CV endorsed permit's catch history assignment can be released from a processor obligation through a mutual agreement exception. The MS/CV endorsed permit owner must submit a copy to NMFS of the written agreement that includes the initial MS permit owner's acknowledgment of the release of the MS/CV endorsed permit owner's processor obligation and the MS/CV endorsed permit owner must identify a processor obligation for a new MS permit.

(v) *MS permit withdrawal.* If a MS permit withdraws from the mothership fishery before the resulting amounts of catch history assignment have been announced by NMFS, any MS/CV endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the MS permit owner must provide written notification of its withdrawal to NMFS and all MS/CV-endorsed permits that are obligated to the MS permit, and the owner of each MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for a new MS permit.

(vi) *Submission of a mutual agreement exception or MS permit withdrawal.* Written notification of a mutual exception agreement or MS permit withdrawal must be submitted to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115.

(d) *MS coop permit and agreement*—(1) *Eligibility and registration.* (i) *Eligibility.* To be an eligible coop entity a group of MS/CV endorsed permit owners (coop members) must be a recognized entity under the laws of the United States or the laws of a State and represent all of the coop members.

(ii) *Annual registration and deadline.* Each year, a coop entity intending to participate as a coop under the MS Coop Program must submit an application for a MS coop permit between February 1 and March 31 of the year in which it intends to fish. NMFS will not consider any applications received after March 31. A MS coop permit expires on December 31 of the year in which it was issued.

(iii) *Application for MS coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (A) below. Only complete applications will be considered for issuance of a MS coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR Web site (*http://www.nwr.noaa.gov*) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(3) of this section.

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing activities. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(*1*) *Coop agreement contents.* Each coop agreement must be signed by all of the coop members (MS/CV endorsed permit owners) and include the following information:

(*i*) A list of all vessels, and permit holders participating in the coop and their share of the allocated catch which must match the amount distributed to individual permit owners by NMFS.

(*ii*) All MS/CV endorsed limited entry member permits identified by permit number.

(*iii*) A processor obligation clause indicating that each MS/CV endorsed permit has notified a specific MS permit by September 1 of the previous year of that MS/CV endorsed permit's intent to obligate its catch history assignment to that MS permit.

(*iv*) A clause indicting that each member MS/CV endorsed permit's catch history assignment is based on the catch history assignment calculation by NMFS used for distribution to the coop.

(*v*) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.

(*vi*) A clause stating that if a permit is transferred during the effective period of the coop agreement, any new owners of that member permit would be coop members required to comply with membership restrictions in the coop agreement.

(*vii*) A description of the coop's enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations.

(*viii*) A description of measures to reduce catch of overfished species.

(*ix*) A clause describing the co-op manager's responsibility for managing inter-coop reassignments of catch history assignment, should any occur.

(*x*) A clause describing how the annual report will be produced to document the coop's catch, bycatch data, inseason catch history reassignments and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(*xi*) Identification of the designated coop manager.

(*xii*) A requirement that agreement by at least a majority of the members is required to dissolve the coop.

(*xiii*) Provisions that prohibit member permit owners that have incurred legal sanctions that prevent them from fishing groundfish in the Council region from fishing in the coop.

(*2*) *Department of Justice correspondence.* Each coop must submit a letter to the Department of Justice requesting a business review letter on the fishery coop. Copies of the letter and any correspondence with the Department of Justice regarding the request must be included in the application to NMFS for a MS Coop Permit.

(*3*) *Inter-coop agreement.* The coop entity must provide, at the time of annual application, copies of any inter-coop agreement(s) into which the coop has entered. Such agreements must incorporate and honor the provisions of the individual coop agreements for each coop that is a party to the inter-coop agreement. Inter-coop agreements are specified at paragraph (e) of this section.

(B) *Acceptance of a coop agreement*—(*1*) If NMFS does not accept the coop agreement, the coop permit application will be returned to the applicant with a letter stating the reasons the coop agreement was not accepted by NMFS.

(*2*) Coop agreements that are not accepted may be resubmitted for review by sufficiently addressing the deficiencies identified in the NMFS letter and resubmitting the entire coop permit application by the date specified in the NMFS letter.

(*3*) An accepted coop agreement that was submitted with the MS coop permit application and for which a MS coop permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to NMFS consistent with the coop agreement contents described in paragraph (d)(1)(iii)(A)(*1*) of this section if there is a material change to the coop agreement.

(*4*) Within 7 calendar days following a material change, the designated coop manager must notify NMFS of the material change. Within 30 calendar days, the designated coop manager must submit to NMFS the revised coop agreement with a letter that describes such changes. NMFS will review the material changes and provide a letter to the coop manager that either accepts the changes as given or does not accept the revised coop agreement with a letter stating the reasons that it was not accepted by NMFS. The coop may resubmit the coop agreement with further revisions to the material changes responding to NMFS concerns.

(iv) *Effective date of MS coop permit.* A MS coop permit will be effective upon the date approved by NMFS and will allow fishing from the start of the MS sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS permanently closes the mothership sector fishing season for the year or a specific MS coop or the designated coop manager notifies NMFS that the coop has completed fishing for the calendar year,

(B) The coop has reached its Pacific whiting allocation,

(C) A material change to the coop agreement has occurred and the designated coop manager failed to notify NMFS within 7 calendar days of the material change and submit to NMFS the revised coop agreement with a letter that describes such changes within 30 calendar days, or

(D) NMFS has determined that a coop failure occurred.

(2) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a MS coop permit. If disapproved, the IAD will provide the reasons for this determination.

(3) *Appeals.* An appeal to a MS coop permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a MS coop permit consistent with the provisions given at § 660.25(f), subpart C.

(5) *Cost recovery.* [Reserved]

(e) *Inter-coop agreements*—(1) *General.* Permitted MS coops may voluntarily enter into inter-coop agreements for the purpose of sharing permitted MS coop allocations of Pacific whiting and allocated non-whiting groundfish. If two or more permitted MS coops enter into an inter-coop agreement, the inter-coop agreement must incorporate and honor the provisions of each permitted MS coop subject to the inter-coop agreement.

(3) *Submission of inter-coop agreements.* Inter-coop agreements must be submitted to NMFS for acceptance.

(4) *Inter-coop agreement review process.* Each designated coop manager must submit a copy of the inter-coop agreement signed by both designated coop managers for review. Complete coop agreements containing all items listed under paragraph (d)(1)(iii)(A)(*1*) will be reviewed by NMFS.

* * * * *

(f) * * *

(2) *Renewal, change of permit ownership, or vessel registration*—(i) *Renewal.* A MS permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. If a vessel registered to the MS permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery it will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(ii) *Change of permit ownership.* A MS permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A MS permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(3) *Accumulation limits*—(i) *MS permit usage limit.* No person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal for the MS permit. An ownership interest form will also be required whenever a new permit owner obtains a MS permit as part of a permit transfer request. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS permit. Determination of ownership interest will subject to the individual and collective rule.

(ii) *Ownership—individual and collective rule.* The ownership that counts toward a person's accumulation limit will include:

(A) Any MS permit owned by that person, and

(B) A portion of any MS permit owned by an entity in which that person has an interest, where the person's share of interest in that entity will determine the portion of that entity's ownership that counts toward the person's limit.

(iii) *[Reserved]*

(iv) *Trawl identification of ownership interest form.* Any person that is applying for or renewing an MS permit shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS Permit unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(4) *Appeals.* An appeal to a MS permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

* * * * *

(g) *Mothership catcher vessel (MS/CV) endorsed permit*—(1) *General.* Any vessel that delivers whiting to a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS/CV-endorsed permit, except that a vessel registered to

limited entry trawl permit without an MS/CV or C/P endorsement may fish for a coop if authorized by the coop. Within the MS Coop Program, an MS/CV endorsed permit may participate in an MS coop or in the non-coop fishery. A MS/CV endorsed permit is a limited entry permit and is subject to the limited entry permit provisions given at § 660.25(b), subpart C.

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(iv) *Restrictions on processing for MS/CV endorsed permits.* A vessel registered to an MS/CV-endorsed permit in a given year shall not engage in processing of Pacific whiting during that year.

* * * * *

(2) *Renewal, change of permit owner, vessel registration, or combination*—(i) *Renewal.* A MS/CV endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. During renewal, all MS/CV endorsed limited entry permit owners must make a preliminary declaration regarding their intent to participate in the coop or non-coop portion of the MS Coop Program for the following year. If the owner of the MS/CV endorsed permit intends to participate in the coop portion of the MS Coop Program, they must also declare which MS vessel to which they intend to obligate the permit's catch history assignment. MS/CV endorsed permits not obligated to a permitted MS coop by March 31 of the fishing year will be assigned to the non-coop fishery. For an MS/CV endorsed permit that is not renewed, the following occurs:

(A) For the first year after the permit is not renewed, the permit will be extinguished, and the catch history assignment from that permit will be assigned to the non-coop fishery.

(B) In the year after the permit is extinguished (the second year after the permit is not renewed), the catch history assignment from that permit will be redistributed proportionally to all valid MS/CV endorsed permits.

(ii) *Change of permit ownership.* A MS/CV endorsed permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A MS/CV endorsed permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(iv) *Combination.* An MS/CV endorsed permit may be combined with one or more other limited entry trawl permits; the resulting permit will be a single permit with an increased size endorsement. If the MS/CV endorsed permit is combined with another limited entry trawl-endorsed permit other than a C/P endorsed permit, the resulting permit will be MS/CV endorsed. If a MS/CV endorsed permit is combined with a C/P endorsed permit, the resulting permit will be exclusively a C/P endorsed permit, and will not have an MS/CV endorsement. If a MS/CV endorsed permit is combined with another MS/CV endorsed permit, the combined catch history assignment of the permit(s) will be added to the active permit (the permit remaining after combination) and the other permit will be retired. NMFS will not approve a permit combination if it results in a person exceeding the accumulation limits specified at paragraph (g)(3) of this section. Any request to combine permits is subject to the provision provided at § 660.25(b), including the combination formula for resulting size endorsements.

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(3) * * *

(i) * * *

(C) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and that is applying for or renewing an MS/CV endorsement shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS/CV endorsement unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits, the person will subject to divestiture provisions specified in paragraph (g)(3)(i)(D) of this section.

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(ii) *Catcher vessel usage limit.* No vessel may catch more than 30 percent of the mothership sector's whiting allocation.

(4) *Appeals.* An appeal to a MS/CV endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

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(h) *Non-coop fishery*—(1) *Access to non-coop fishery allocation.* All vessels registered to the MS/CV endorsed permits assigned to the non-coop fishery will have access to harvest and deliver the aggregate catch history assignment of all MS/CV permits assigned to the non-coop fishery.

(2) *Non-coop fishery closure.* The non-coop fishery will be closed by automatic action as specified at § 660.60(d) when the Pacific whiting or non-whiting allocations to the non-coop fishery have been reached or are projected to be reached.

(i) *Retention requirements.* Catcher vessels participating in the MS Coop Program may discard minor operational amounts of catch at sea if the observer has accounted for the discard (*i.e.,* a maximized retention fishery).

(j) *Observer requirements*—(1) *Observer coverage requirements.* (i) *Coverage.* (A) *Motherships.* Any vessel registered to a MS permit 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and any vessel registered to a MS permit mothership shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(B) *Catcher vessels.* Any vessel delivering catch to any mothership must carry one NMFS-certified observer each day that the vessel is used to take groundfish.

(ii) *Observer workload*—(A) *Motherships.* The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

(B) *Catcher vessels.* If an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel is reported to the observer program and NOAA OLE by the observer provider. The observer must be available for an interview with the observer program or NOAA OLE if necessary.

(2) *Vessel responsibilities.* An operator and/or crew of a vessel required to carry an observer must provide:

(i) *Accommodations and food*—(A) *Motherships.* Provide accommodations and food that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(B) *Catcher vessels*—(*1*) Accommodations and food for trips less than 24 hours must be equivalent to those provided for the crew.

(*2*) Accommodations and food for trips of 24 hours or more must be

equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or their designee.

(ii) *Safe conditions.* Motherships and Catcher Vessels must:

(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel including, but not limited to, rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition, and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel return to port if operated in an unsafe manner or if unsafe conditions are indentified.

(B) *Have on board* a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software*—(A) Motherships must:

(*1*) Provide hardware and software pursuant to regulations at §§ 679.50(g)(1)(iii)(B)(1) through 679.50(g)(1)(iii)(B)(3).

(*2*) Provide the observer(s) access to a computer required under paragraph (j)(2)(iii)(A) of this section, and that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(*3*) Ensure that the mothership has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(*4*) Ensure that the communication equipment required in paragraph (j)(2)(iii) of this section and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (j)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(B) *Catcher vessels.* [Reserved]

(iv) *Vessel position.* Allow observer(s) access to the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer.

(vii) *Records.* Allow observer(s) to inspect and copy any State or Federal logbook maintained voluntarily or as required by regulation.

(viii) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observer(s) with a safe work area.

(C) Collecting samples of catch.

(D) Collecting and carrying baskets of fish.

(E) Allowing the observer(s) to collect biological data and samples.

(F) Providing adequate space for storage of biological samples.

(ix) *Sample station and operational requirements.*

(A) *Motherships.* To allow the observer to carry out required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

(*1*) *Accessibility.* The observer sampling station must be available to the observer at all times.

(*2*) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

(*3*) *Access.* Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(*4*) *Minimum work space.* The observer must have a working area of at least 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(*5*) *Table.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(*6*) *Diverter board.* The conveyor belt conveying unsorted catch must have a removable board ("diverter board") to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling.

(*7*) *Other requirements.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(*8*) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at § 679.28(j)(2)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(B) *Catcher vessels.* To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that is:

(*1*) *Accessible.* The observer sampling station must be available to the observer at all times.

(*2*) *Limits hazards.* To the extent possible, the area should be free and clear of hazards including, but not limited to, moving fishing gear, stored fishing gear, inclement weather conditions, and open hatches.

(x) *Transfer at-sea.* Observers may be transferred at-sea between motherships, between motherships and catcher-processors, or between a mothership and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

(A) Ensure that transfers of observers at sea via small boat under its own power are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can finish any sampling work, collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat in which any transfer is made.

(3) *Procurement of observer services*—(i) *Motherships*—(A) Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from a permitted observer provider, except that:

(*1*) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(*2*) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(B) [Reserved]

(ii) *Catcher vessels*—(A) Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from a permitted observer provider, except that:

(*1*) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(*2*) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(B) [Reserved]

(4) *Application to become an observer provider*—(i) *Mothership observers.* Any observer provider holding a valid permit issued by the North Pacific Groundfish Observer Program in 2010 can supply observer services and will be issued a West Coast Groundfish Observer Program permit.

(ii) *Catcher vessel observers.* [Reserved]

(5) *Observer provider responsibilities*—(i) *Provide qualified candidates to serve as observers.* Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Prior to hiring an observer candidate*—(A) *Motherships.*

(*1*) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (*i.e.* The At-Sea Hake Observer Program's Observer Manual) prior to hiring the candidate. Observer job information is available from the Observer Program Office's Web site at *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/atseahake.cfm.*

(*2*) *Observer contracts.* The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*i*) That all the observer's catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions;

(*ii*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury that would prevent the candidate from performing their assigned duties of an observer and which were not documented in the physician's statement submitted by the candidate;

(*iii*) That the observer completes duties in a timely manner. An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner: Once an observer is scheduled for a final deployment debriefing, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s); report for the scheduled debriefing and complete all debriefing responsibilities; report to the observer program office and the NOAA OLE any refusal to board an assigned vessel.

(*iv*) That all sampling and safety gear will be returned to the Observer Program Office.

(B) *Catcher vessels*—(*1*) Provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties, for example, the West Coast Groundfish Observer Program's sampling manual. Observer job information is available from the Observer Program Office's Web site at *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm.*

(*2*) For each observer employed by an observer provider, have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(*i*) That all of the observer's in-season catch messages and catch reports between the observer and NMFS are delivered to the Observer Program Office as specified by the Observer Program instructions;

(*ii*) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties;

(*iii*) That the observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the NMFS West Coast Groundfish Observer Training class.

(iii) *Observers provided to vessels*—(A) *Motherships.* Observers provided to mothership vessels:

(*1*) Must have a valid North Pacific groundfish observer certification endorsements and an At-Sea Hake Observer Program certification;

(*2*) Must not have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(*3*) Must have successfully completed all NMFS required training and briefing before deployment.

(B) *Catcher vessels.* Observers provided to catcher vessels:

(*1*) Must have a valid West Coast Groundfish observer certification;

(*2*) Must have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's

statement, as required in paragraph (j)(5)(x)(B)(*2*) of this section that would prevent him or her from performing his or her assigned duties; and

(*3*) Must have successfully completed all NMFS required training and briefing before deployment.

(iv) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified at paragraph (j)(1)(i) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the provider must report it to the observer program at least 4 hours prior to the vessel's estimated embarking time.

(v) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vi) *Provide observer deployment logistics*—(A) *Motherships.* An observer provider must provide to each of its observers under contract:

(*1*) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(*2*) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*3*) An observer under contract may be housed on a vessel to which he or she is assigned:

(*i*) Prior to their vessel's initial departure from port;

(*ii*) For a period not to exceed twenty-four hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(*iii*) For a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(*iv*) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(*v*) An observer under contract who is between vessel assignments must be provided with shoreside accommodations pursuant to the terms of the contract between the observer provider and the observers. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(B) *Catcher vessels.* An observer provider must ensure each of its observers under contract:

(*1*) Has an individually assigned mobile or cell phones, in working order, for all necessary communication. An observer provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(*2*) Calls into the NMFS deployment hotline upon departing and arriving into port for each trip to leave the following information: Observer name, phone number, vessel departing on, expected trip end date and time.

(*3*) Remains available to NOAA OLE and the Observer Program until the conclusion of debriefing.

(*4*) Receives all necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(*5*) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*i*) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(*ii*) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(*iii*) Otherwise, each observer between vessels, while still under contract with a permitted observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(vii) *Observer deployment limitations*—(A) *Motherships.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(*1*) Deploy an observer on the same vessel more than 90 days in a 12-month period;

(*2*) Deploy an observer for more than 90 days in a single deployment;

(*3*) Include more than four vessels assignments in a single deployment, or

(*4*) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(B) *Catcher vessels.* Not deploy an observer on the same vessel more than 90 calendar days in a 12-month period.

(viii) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (j)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(ix) *Maintain communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(x) *Maintain Communications With The Observer Program Office.* An observer provider must provide all of

the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Motherships*—(*1*) *Training and briefing registration materials.* The observer provider must submit training and briefing registration materials to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session.

(*i*) Registration materials consist of the date of requested training or briefing with a list of observers including each observer's full name (*i.e.,* first, middle and last names).

(*ii*) *Projected observer assignments.* Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(*2*) *Observer debriefing registration.* The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(*3*) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*i*) Vessels required to have observer coverage as specified at paragraph (j)(1)(i) of this section; and

(*ii*) Observers.

(*4*) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, e-mail address, and address.

(*5*) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*i*) Any information regarding possible observer harassment;

(*ii*) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

(*iii*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7);

(*iv*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*v*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(B) *Catcher vessels.* An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(*1*) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 7 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(*i*) Training registration materials consist of the following: Date of requested training; a list of observer candidates that includes each candidate's full name (*i.e.,* first, middle and last names), date of birth, and gender; a copy of each candidate's academic transcripts and resume; a statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions; projected observer assignments—Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and length of observers contract.

(*ii*) Briefing registration materials consist of the following: Date and type of requested briefing session; list of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names); projected observer assignments—Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and length of observer contract.

(*iii*) *Debriefing.* The West Coast Groundfish Observer Program will notify the observer provider which observers require debriefing and the specific time period the provider has to schedule a date, time, and location for debriefing. The observer provider must contact the West Coast Groundfish Observer program within 5 business days by telephone to schedule debriefings. Observer providers must immediately notify the observer program when observers end their contract earlier than anticipated.

(*2*) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(*3*) *Certificates of insurance.* Copies of "certificates of insurance," that names the NMFS Observer Program leader as the "certificate holder", shall be submitted to the Observer Program Office by February 1 of each year. The

certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(*i*) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*ii*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*iii*) States Worker's Compensation as required.

(*iv*) Commercial General Liability.

(*4*) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*i*) Vessels required to have observer coverage as specified at paragraph (j)(1)(i) of this section; and

(*ii*) Observers.

(*5*) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program office any change of management or contact information submitted on the provider's permit application under paragraphs (j)(4) of this section within 30 days of the effective date of such change.

(*6*) *Boarding refusals.* The observer provider must report to NMFS any trip that has been refused by an observer within 24 hours of the refusal.

(*7*) *Biological samples.* The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.

(*8*) *Observer status report.* Each Tuesday, observer providers must provide NMFS with an updated list of contact information for all observers that includes the observer's name, mailing address, e-mail address, phone numbers, port of embarkation ("home port"), fishery deployed the previous week and whether or not the observer is "in service," indicating when the observer has requested leave and/or is not currently working for the provider.

(*9*) Providers must submit to NMFS, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, *etc.*

(*10*) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake or West Coast Groundfish Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*i*) Any information regarding possible observer harassment;

(*ii*) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

(*iii*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7);

(*iv*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*v*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xi) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act or as otherwise required by law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiii) *Limitations on conflict of interest.* Observer providers must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in the North Pacific or Pacific Coast Groundfish fishery managed under an FMP for the waters off the coasts of Alaska, Washington, Oregon, and California, including, but not limited to,

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, or shoreside processor facility involved in the catching, taking, harvesting or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(*3*) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing 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 observer providers.

(xiv) *Observer conduct and behavior.* Observer providers must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs and;

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or nonperformance of the observer's official duties.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to: Observers, observer candidates and; the Observer Program Office.

(xv) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines

pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities.*

(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (j)(6)(iii) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements.*

(A) *Initial certification.* NMFS may certify individuals who, in addition to any other relevant considerations:

(*1*) Are employed by an observer provider company permitted pursuant to § 679.50 at the time of the issuance of the certification;

(*2*) Have provided, through their observer provider:

(*i*) Information identified by NMFS at § 679.50 regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer education and health standards as specified in § 679.50 and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake and/or the West Coast Groundfish Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program; and having not been decertified under paragraph (j)(6)(ix) of this section, or pursuant to § 679.50.

(B) [Reserved]

(iv) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(v) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified at paragraph (j)(6)(iii) of this section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *Motherships*—(*1*) *North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(*2*) *North Pacific Groundfish Observer Program annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(*3*) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(*4*) *At-Sea Hake Observer Program endorsements.* A Pacific hake fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(*i*) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska;

(*ii*) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment; successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and comply with all of the other requirements of this section.

(B) *Catcher vessels.* The following endorsements must be obtained in addition to observer certification, in order for an observer to deploy.

(*1*) *West Coast Groundfish Observer Program training certification endorsement.* A training certification endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the observer Program office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing training once more.

(*2*) *West Coast Groundfish Observer Program annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a training certification endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(*3*) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment after their certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all briefing requirements, when applicable. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(vi) *Maintaining the validity of observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) *Motherships*—(*1*) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment

hotline upon departing and arriving into port each trip to leave the following information: Observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(*2*) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(*3*) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(*4*) Successfully complete NMFS-approved annual briefings as prescribed by the At-Sea Hake Observer Program.

(*5*) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(*6*) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(*7*) Submit all data and information required by the observer program within the program's stated guidelines.

(B) *Catcher vessels.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(*1*) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: Observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(*2*) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(*3*) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(*4*) Successfully complete NMFS-approved annual briefings as prescribed by the West Coast Groundfish Observer Program.

(*5*) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(*6*) Hold current basic cardiopulmonary resuscitation/first aid certification as per American Red Cross Standards.

(*7*) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(*8*) Submit all data and information required by the observer program within the program's stated guidelines.

(*9*) Meet the minimum annual deployment period of 3 months at least once every 12 months.

[Alternative 1 for paragraph (j)(6)(vii) (Council-deemed)]

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest in the vessels on which the observers are stationed, or in the vessels receiving deliveries from or making deliveries to those vessels, other than the provision of observer services.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

[Alternative 2 for paragraph (j)(6)(vii) (NMFS-proposed)]

(vii) Limitations on conflict of interest. Observers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(*3*) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.* (A) Observers must:

(*1*) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(*2*) Report to the observer program office and the NMFS OLE any time they refuse to board.

(*3*) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(*4*) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(B) [Reserved]

(ix) *Suspension and decertification*—(A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of

observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(*1*) When it is alleged that the observer has not met applicable standards, including any of the following:

(*i*) Failed to satisfactorily perform duties of observers as specified in writing by the NMFS Observer Program; or

(*ii*) Failed to abide by the standards of conduct for observers, including conflicts of interest;

(*2*) Upon conviction of a crime or upon entry of a civil judgment for:

(*i*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(*ii*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*iii*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the IAD within 30 days of its issuance to the Office of Administrative Appeals pursuant to § 679.43.

(k) *MS coop failure*—(1) The Regional Administrator will determine that a permitted MS coop is considered to have failed if:

(i) The coop members dissolve the coop, or

(ii) The coop membership falls below 20 percent of the MS/CV endorsed limited entry permits, or

(iii) The coop agreement is no longer valid.

(2) If a permitted MS coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop.

(3) In the event of a NMFS determined coop failure, or reported failure, the designated coop manager will be notified in writing about NMFS' determination. Upon notification of a coop failure, fishing under the MS coop permit will no longer be allowed. Should a coop failure determination be made during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

24. In § 660.160:

a. Paragraphs (a)(3) and (a)(4) are revised;

b. Paragraphs (g) and (h) are removed;

c. Paragraphs (b) through (f) are redesignated as paragraphs (c) through (g);

d. A new paragraph (b) is added;

e. Text is added to the newly designated paragraph (c)(2);

f. New paragraphs (c)(3) through (c)(7), (d), and (e)(2) through (e)(4) are added;

g. The newly designated paragraphs (e)(1) introductory text, and (e)(5) are revised;

h. The newly designated paragraph (e)(7) is redesignated as paragraph (e)(6);

i. Text is added to the newly designated paragraph (g); and

j. A new paragraph (h) is added to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(a) * * *

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) *Participation requirements and responsibilities*—(1) *C/P vessels*—(i) *C/P vessel participation requirements.* A vessel is eligible to fish as a catcher/processor in the C/P Coop Program if:

(A) The vessel is registered to a C/P endorsed limited entry trawl permit.

(B) The vessel is not used to harvest fish as a catcher vessel in the mothership coop program in the same calendar year.

(C) The vessel is not used to fish as a mothership in the MS Coop Program in the same calendar year.

(ii) *C/P vessel responsibilities.* The owner and operator of a catcher/processor vessel must:

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d), subpart C; and maintain and submit all records and reports specified at § 660.113(d) including, economic data, scale tests records, and cease fishing reports.

(B) *Observers.* As specified at paragraph (g) of this section, procure observer services, maintain the appropriate level of coverage, and meet the vessel responsibilities.

(C) *Catch weighing requirements.* The owner and operator of a C/P vessel must:

(*1*) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in § 660.15(b), subpart C;

(*2*) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in § 660.15(b), subpart C.

(2) *C/P coops*—(i) *C/P coop participation requirements.* For a C/P coop to participate in the catcher/processor sector of the Pacific whiting fishery, the C/P coop must:

(A) Be issued a C/P coop permit;

(B) Be composed of all C/P endorsed limited entry permits and their owners;

(C) Be formed voluntarily;

(D) Be a legally recognized entity that represents its members; and

(E) Designate an individual as a coop manager.

(ii) *C/P coop responsibilities.* A C/P coop is responsible for:

(A) Applying for and being registered to a C/P coop permit;

(B) Organizing and coordinating harvest activities of vessels that fish for the coop;

(C) Allocating catch for use by specific coop members;

(D) Monitoring harvest activities and enforcing the catch limits of coop members;

(E) Submitting an annual report.

(F) Having a designated coop manager. The designated coop manager must:

(*1*) Serve as the contact person with NMFS and the Council;

(*2*) Be responsible for the annual distribution of catch and bycatch allocations among coop members;

(*3*) Prepare and submit an annual report on behalf of the coop; and,

(*4*) Be authorized to receive or respond to any legal process in which the coop is involved; and

(*5*) Notify NMFS if the coop dissolves.

(iii) *C/P coop compliance and joint/several liability.* A C/P coop must comply with the provisions of this section. The C/P coop, member limited entry permit owners, and owners and operators of vessels registered to member limited entry permits, are jointly and severally responsible for compliance with the provisions of this section. Pursuant to 15 CFR part 904, each C/P coop, member permit owner, and owner and operator of a vessel registered to a coop member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, a C/P coop is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

* * * * *

(c) * * *

(2) *C/P Coop Program annual allocations.* The C/P Coop Program allocation of Pacific whiting is equal to the catcher/processor sector allocation. Only a single coop may be formed in the catcher/processor sector with the one permitted coop receiving the catcher/processor sector allocation.

(3) *Non-whiting groundfish species*—(i) Non-whiting groundfish species with a catcher/processor sector allocation are established in accordance with regulation at § 660.55(i). The pounds associated with each species will be provided when the coop permit is issued.

(ii) Groundfish species with at-sea sector set-asides will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(iii) Groundfish species not addressed under paragraph (i) or (ii) above, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken.

(4) *Halibut set-asides.* Annually a specified amount of the Pacific halibut will be held in reserve as a shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10' N lat.

(5) *Non-whiting groundfish species reapportionment.* The Regional Administrator may make available for harvest to the mothership sector of the Pacific whiting fishery, the amounts of the catcher/processor sector's non-whiting catch allocation remaining when the catcher/processor sector reaches its Pacific whiting allocation or participants in the catcher/processor sector do not intend to harvest the remaining sector allocation. The designated coop manager must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year. At any time after greater than 80 percent of the catcher/processor sector Pacific whiting allocation has been harvested, the Regional Administrator may contact the designated coop manager to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take into consideration the best available data on total projected fishing impacts.

(6) *Reaching the catcher/processor sector allocation.* When the catcher/processor sector allocation of Pacific whiting or non-whiting groundfish catch allocation is reached or is projected to be reached, further taking and retaining, receiving, or at-sea processing by a catcher/processor is prohibited. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process catch that was on board before at-sea processing was prohibited. The catcher/processor sector will close when the allocation of any one species is reached or projected to be reached.

(7) *Announcements.* The Regional Administrator will announce in the **Federal Register** when the catcher/processor sector allocation of Pacific whiting or non-whiting groundfish with an allocation is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting, or reapportionment of non-whiting groundfish with allocations may be made effective immediately by actual notice to fishers and processors, by e-mail, Internet (*http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm*), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register,** in which instance public comment will be sought for a reasonable period of time thereafter.

(d) *C/P coop permit and agreement*—(1) *Eligibility and registration*—(i) *Eligibility.* To be an eligible coop entity a group of C/P endorsed permit owners (coop members) must be a recognized entity under the laws of the United States or the laws of a State and that represents all of the coop members.

(ii) *Annual registration and deadline.* Each year, the coop entity must submit a complete application to NMFS for a C/P coop permit. The application must be submitted to NMFS by between February 1 and March 31 of the year in which it intends to participate. NMFS will not consider any applications received after March 31. A C/P coop permit expires on December 31 of the year in which it was issued.

(iii) *Application for a C/P coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a C/P coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR Web site (*http://www.nwr.noaa.gov*) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(2) of this section.

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing activities. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(*1*) *Coop agreement contents.* The coop agreement must be signed by the coop members (C/P endorsed permit owners) and include the following information:

(*i*) A list of all vessels registered to C/P endorsed permits that the member

permit owners intend to use for fishing under the C/P coop permit.

(*ii*) All C/P endorsed limited entry member permits identified by permit number.

(*iii*) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.

(*iv*) A clause stating that if a permit is transferred during the effective period of the co-op agreement, any new owners of that member permit would be coop members and are required to comply with membership restrictions in the coop agreement.

(*v*) A description of the coop's enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations.

(*vi*) A description of measures to reduce catch of overfished species.

(*vii*) A clause describing how the annual report will be produced to document the coop's catch, bycatch data, and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(*viii*) Identification of the designated coop manager.

(*2*) *Department of Justice correspondence.* Each coop must submit a letter to the Department of Justice requesting a business review letter on the fishery coop. Copies of the letter and any correspondence with the Department of Justice regarding the request must be included in the application to NMFS for a C/P coop permit.

(B) *Acceptance of a coop agreement*—(*1*) If NMFS does not accept the coop agreement, the coop permit application will be returned to the applicant with a letter stating the reasons the coop agreement was not accepted by NMFS.

(*2*) Coop agreements that are not accepted may be resubmitted for review by sufficiently addressing the deficiencies identified in the NMFS letter and resubmitting the entire coop permit application by the date specified in the NMFS letter.

(*3*) An accepted coop agreement that was submitted with the C/P coop permit application and for which a C/P coop permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to NMFS consistent with the coop agreement contents described in this paragraph if there is a material change to the coop agreement.

(*4*) Within 7 calendar days following a material change, the designated coop manager must notify NMFS of the material change. Within 30 calendar days, the designated coop manger must submit to NMFS the revised coop agreement with a letter that describes such changes. NMFS will review the material changes and provide a letter to the coop manager that either accepts the changes as given or does not accept the revised coop agreement with a letter stating the reasons that it was not accepted by NMFS. The coop may resubmit the coop agreement with further revisions to the material changes responding to NMFS concerns.

(iv) *Effective date of C/P coop permit.* A C/P coop permit will be effective on the date approved by NMFS and will allow fishing from the start of the C/P sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS closes the C/P sector fishing season for the year or the designated coop manager notifies NMFS that the coop has completed fishing for the calendar year,

(B) The C/P coop has reached its Pacific whiting allocation,

(C) A material change to the coop agreement has occurred and the designated coop manager failed to notify NMFS within 7 calendar days of the material change and submit to NMFS the revised coop agreement with a letter that describes such changes within 30 calendar days, or

(D) NMFS has determined that a coop failure occurred.

(2) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a C/P coop permit. If disapproved, the IAD will provide the reasons for this determination.

(3) *Appeals.* An appeal to a C/P coop permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a C/P coop permit consistent with the provisions given at § 660.25(f), subpart C.

(5) *Cost recovery.* [Reserved]

(e) *C/P endorsed permit*—(1) *General.* Any vessel participating in the C/P sector of the non-Tribal primary Pacific whiting fishery during the season described at § 660.131(b) of this subpart must be registered to a valid limited entry permit with a C/P endorsement. A C/P endorsed permit is a limited entry permit and is subject to the limited entry permit provisions given at § 660.25(b), subpart C.

* * * * *

(2) *Renewal, change in permit ownership, vessel registration, or combination.*

(i) *Renewal.* A C/P endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. If a vessel registered to the C/P endorsed permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the permit renewal that while participating in the whiting fishery they will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(ii) *Change of permit ownership.* A C/P endorsed permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A C/P endorsed permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(iv) *Combination.* If two or more permits are combined, the resulting permit is one permit with an increased size endorsement. A C/P endorsed permit that is combined with another limited entry trawl-endorsed permit that does not have a C/P endorsement will result in a single trawl limited entry permit with a C/P endorsement with a larger size endorsement. Any request to combine permits is subject to the provisions provided at § 660.25(b), including the combination formula for resulting size endorsements.

(3) *Appeals.* An appeal to a C/P endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) *Fees.* The Regional Administrator is authorized to charge fees for the administrative costs associated with review and issuance of a C/P endorsement consistent with the provisions at § 660.25(f), subpart C.

(5) *Cost recovery.* [Reserved]

* * * * *

(g) *Observer requirements*—(1) *Observer coverage requirements*—(i) *Coverage.* Any vessel registered to a C/P endorsed limited entry trawl permit that is 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and any vessel registered to a C/P endorsed limited entry trawl permit that is shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer workload.* The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel is reported to the observer program and NOAA OLE by the observer provider. The observer must be available for an interview with the observer program or NOAA OLE if necessary.

(2) *Vessel responsibilities.* An operator and/or crew of a vessel required to carry an observer must provide:

(i) *Accommodations and food.* Provide accommodations and food that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Safe conditions*—(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, including but not limited to, rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition, and port bar crossings. An observer may refuse boarding or reboarding a vessel and may request a vessel to return to port if operated in an unsafe manner or if unsafe conditions are identified.

(B) *Have on board* a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software.* Catcher/processor vessels must:

(A) Provide hardware and software pursuant to regulations at §§ 679.50(g)(1)(iii)(B)(1) through 679.50(g)(1)(iii)(B)(3).

(B) Provide the observer(s) access to a computer required under paragraph (g)(2)(iii) of this section that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the catcher/processor has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D) Ensure that the communication equipment required in paragraph (g)(2)(iii) of this section and used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Vessel position.* Allow observer(s) access to, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer.

(vii) *Records.* Allow observer(s) to inspect and copy any State or Federal logbook maintained voluntarily or as required by regulation.

(viii) *Assistance.* Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observer(s) with a safe work area.

(C) Collecting samples of catch when requested by the observer(s).

(D) Collecting and carrying baskets of fish when requested by the observer(s).

(E) Allowing the observer(s) to collect biological data and samples.

(F) Providing adequate space for storage of biological samples.

(ix) *Sample Station and Operational Requirements for catcher/processor vessels.* This paragraph contains the requirements for observer sampling stations. To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

(A) *Accessibility.* The observer sampling station must be available to the observer at all times.

(B) *Location.* The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

(C) *Access.* Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(D) *Minimum work space.* The observer must have a working area of at least 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(E) *Table.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(F) *Diverter board.* The conveyor belt conveying unsorted catch must have a removable board ("diverter board") to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(G) *Other Requirements.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(H) *Observer Sampling Scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at § 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(x) *Transfer At-sea.* Observers may be transferred at-sea between catcher-processors, between catcher-processors and motherships, or between a catcher-processor and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

(A) Ensure that transfers of observers at sea via small boat under its own power are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can finish any sampling work, collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat in which any transfer is made.

(3) *Procurement of observer services*—(i) Owners of vessels required to carry observers under paragraph (g)(1) of this section must arrange for observer services from a permitted observer provider, except that:

(A) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(B) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(ii) [Reserved]

(4) *Application to become an observer provider.* Any observer provider holding a valid permit issued by the North Pacific Groundfish Observer Program in 2010 can supply observer services and will be issued a West Coast Groundfish Observer Program permit.

(5) *Observer provider responsibilities*—(i) *Provide qualified candidates to serve as observers.* Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Prior to hiring observer candidate.* The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (*i.e.* The At-Sea Hake Observer Program's Observer Manual) prior to hiring an observer candidate. Observer job information is available from the Observer Program Office's Web site at *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/atseahake.cfm.*

(iii) *Observer contracts.* The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(A) That all the observer's catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions;

(B) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailment or injury that would prevent the candidate from performing the assigned duties of an observer and which were not documented in the physician's statement submitted by the candidate;

(C) That the observer completes duties in a timely manner. An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(*1*) Once an observer is scheduled for a final deployment debriefing, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(*2*) Report for the scheduled debriefing and complete all debriefing responsibilities;

(*3*) Report to the observer program office and the NOAA OLE any refusal to board an assigned vessel, and

(*4*) Return all sampling and safety gear to the Observer Program Office.

(iv) *Observers provided to vessels.* Observers provided to catcher processors:

(A) Must have a valid North Pacific groundfish observer certification endorsements and an At-Sea Hake Observer Program certification;

(B) Must not have informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(C) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment as requested pursuant to the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified under paragraph (g)(1) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the provider must report it to the observer program at least 4 hours prior to the vessel's estimated embarking time.

(vi) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vii) *Provide observer deployment logistics.* An observer provider must provide to each of its observers under contract:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(B) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(*1*) An observer under contract may be housed on a vessel to which he or she is assigned:

(*i*) Prior to their vessel's initial departure from port;

(*ii*) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(*iii*) For a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(*2*) [Reserved]

(C) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(D) An observer under contract who is between vessel assignments must be provided with shoreside accommodations in accordance with the contract between the observer and the observer provider. If the provider is providing accommodations, it must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Deployment limitations.* An observer provider must not exceed observer deployment limitations specified in this paragraph unless alternative arrangements are approved by the Observer Program Office. An observer provider must not:

(A) Deploy an observer on the same vessel for more than 90 days in a 12-month period;

(B) Deploy an observer for more than 90 days in a single deployment;

(C) Include more than four vessel assignments in a single deployment, or

(D) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(ix) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (g)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(x) *Maintain communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(xi) *Maintain communications with the observer program.* An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Observer training and briefing.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session. Registration materials consist of the following: The date of requested training or briefing with a list of observers including each observer's full name (*i.e.,* first, middle and last names).

(B) *Projected observer assignments.* Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(C) *Observer debriefing registration.* The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(D) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (g)(1) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(*1*) Vessels required to have observer coverage as specified at paragraph (g)(1) of this section; and

(*2*) Observers.

(E) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, e-mail address, and address.

(F) *Other reports.* Reports of the following must be submitted in writing to the At-Sea Hake Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7);

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act or other applicable law remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Conflict of interest.* An observer provider must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed under an FMP for the waters off the coasts of Alaska, Washington, Oregon, and California, including, but not limited to,

(*1*) Any ownership, mortgage holder, or other secured interest in a vessel or shoreside processor facility involved in the catching, taking, harvesting or processing of fish,

(*2*) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(*3*) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from anyone who conducts fishing or fish processing activities that are regulated by NMFS in the Pacific coast or North Pacific regions, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs and;

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to observers, observer candidates, and the Observer Program Office.

(xvi) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities*—(i) *Observer certification*—(A) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (g)(6)(i)(C) of this section.

(B) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(C) *Certification requirements.* NMFS may certify individuals who, in addition to any other relevant considerations:

(*1*) Are employed by an observer provider company holding a valid North Pacific Groundfish Observer Program permit at the time of the issuance of the certification to the observer;

(*2*) Have provided, through their observer provider:

(*i*) Information set forth at § 679.50 regarding an observer candidate's health and physical fitness for the job;

(*ii*) Meet all observer education and health standards as specified in § 679.50 and

(*iii*) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*3*) Have not been decertified under paragraph (g)(6)(i)(I) of this section, or pursuant to § 679.50.

(D) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(E) *Issuance of an observer certification.* An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (g)(6)(i)(C) of this section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(*1*) *North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(*2*) *North Pacific Groundfish Observer Program annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(*3*) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(*4*) *At-Sea Hake Observer Program endorsements.* A Pacific hake fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(*i*) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska, unless an individual with this qualification is not available;

(*ii*) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;

(*iii*) Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and

(*iv*) Comply with all of the other requirements of this section.

(F) *Maintaining the validity of observer certification.* After initial issuance, an observer must keep their

certification valid by meeting all of the following requirements specified below:

(*1*) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

(*2*) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(*3*) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or an authorized officer or NMFS.

(*4*) Successfully complete NMFS-approved annual briefings as prescribed by the At-Sea Hake Observer Program.

(*5*) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(*6*) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

(*7*) Submit all data and information required by the observer program within the program's stated guidelines.

[Alternative 1 for paragraph (g)(6)(i)(G) (Council-deemed)]

(G) *Limitations on conflict of interest.* Observers:

(*1*) Must not have a direct financial interest in the vessels on which the observers are stationed, other than the provision of observer services.

(*2*) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel owned or operated by a person who employed the observer in the last two years.

(*4*) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(*5*) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

[Alternative 2 for paragraph (g)(6)(i)(G) (NMFS-proposed)]

(G) Limitations on conflict of interest. Observers:

(*1*) Must not have a direct financial interest, other than the provision of observer services, in a fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

(*i*) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(*ii*) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(*iii*) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(*2*) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel or at any shore-based owned or operated by a person who employed the observer in the last two years.

(*4*) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based processor while employed by an observer provider.

(*5*) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(H) *Standards of behavior.* Observers must:

(*1*) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(*2*) Report to the observer program office and the NOAA Office of Law Enforcement any time they refuse to board a vessel.

(*3*) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(*4*) Not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(I) *Suspension and decertification.*

(*1*) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(*2*) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(*i*) When it is alleged that the observer has committed any acts or omissions of any of the following: Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or failed to abide by the standards of conduct for observers (including conflicts of interest);

(*ii*) Upon conviction of a crime or upon entry of a civil judgment for: Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(*3*) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken.

(*4*) *Appeals.* A certified observer who receives an IAD that suspends or revokes the observer certification may appeal the determination within 30 days of its issuance to the Office of Administrative Appeals pursuant to § 679.43.

(h) *C/P coop failure*—(1) The Regional Administrator will determine that a permitted C/P coop is considered to

have failed if any one of the following occurs:

(i) Any current C/P endorsed limited entry trawl permit is not identified as a C/P coop member in the coop agreement submitted to NMFS during the C/P coop permit application process;

(ii) Any current C/P endorsed permit withdraws from the C/P coop agreement;

(iii) The coop members voluntarily dissolve the coop; or

(iv) The coop agreement is no longer valid.

(2) If the permitted C/P coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop.

(3) The Regional Administrator may make an independent determination of a coop failure based on factual information collected by or provided to NMFS.

(4) In the event of a NMFS-determined coop failure, or reported failure, the designated coop manager will be notified in writing about NMFS' determination.

(i) Upon notification of a coop failure, the C/P coop permit will no longer be in effect.

(ii) The C/P sector will convert to an IFQ-based fishery beginning the following calendar year after a coop failure, or a soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ fishery for the C/P sector. Each C/P endorsed permit would receive an equal distribution of QS from the total IFQ for the catcher/processor sector allocation.

25. In § 660.212, the introductory text, and paragraphs (a)(2) and (c)(1), are revised to read as follows:

§ 660.212 Fixed gear fishery—prohibitions.

These prohibitions are specific to the limited entry fixed gear fisheries and to the limited entry trawl fishery Shorebased IFQ Program under gear switching. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 660.12, subpart C, it is unlawful for any person to:

* * * * *

(a) * * *

(2) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the limited entry, fixed gear sablefish primary season from a vessel authorized to fish in that season, as described at § 660.231, subpart E and except for IFQ species taken in the Shorebased IFQ Program from a vessel authorized under gear switching provisions as described at § 660.140.

* * * * *

(c) *Fishing in conservation areas*—(1) Operate a vessel registered to a limited entry permit with a longline, trap (pot), or trawl endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.230(d)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.212(a) or except as authorized in the groundfish management measures at § 660.230.

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[FR Doc. 2010–21124 Filed 8–24–10; 11:15 am]

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Federal Register

Tuesday,
August 31, 2010

Part III

Department of Homeland Security

Coast Guard

46 CFR Parts 108, 117, 133, et al.
Lifesaving Equipment: Production Testing and Harmonization With International Standards; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 108, 117, 133, 160, 164, 180, and 199

[USCG–2010–0048]

RIN 1625–AB15

Lifesaving Equipment: Production Testing and Harmonization With International Standards

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations for certain lifesaving equipment, including launching appliances (winches and davits), release mechanisms, survival craft (lifeboats, inflatable liferafts, and inflatable buoyant apparatuses), rescue boats, and automatic disengaging devices. The proposed rules would harmonize the Coast Guard's design, construction, and performance standards for this lifesaving equipment with international standards. In addition, the proposed rules would provide for the use of qualified independent laboratories, instead of Coast Guard inspectors, during the approval process and for production inspections of certain types of lifesaving equipment.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before November 29, 2010 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before November 29, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0048 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.C of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to *oira_submission@omb.eop.gov* (include the docket number and "Attention: Desk Officer for Coast Guard, DHS" in the subject line of the e-mail) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, *Attn:* Desk Officer, U.S. Coast Guard.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at U.S. Coast Guard Headquarters, 2100 2ND ST SW., STOP 7126, Washington, DC 20593–7126 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1385. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. George Grills, P.E., Commercial Regulation and Standards Directorate, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–5214), Coast Guard, telephone 202–372–1385, or e-mail address *George.G.Grills@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

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I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2010–0048), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery but please use only one of these means. The Coast Guard recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that the Coast Guard can contact you if the Coast Guard has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the "submit a comment" box, which will then become highlighted in blue. Insert "USCG–2010–0048" in the Keyword box, click "Search", and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments and material received during the comment period. The Coast Guard may change this proposed rule in view of your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2010–0048) in the Keyword box, and click "Search". If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Coast Guard has an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

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

D. Public Meeting

The Coast Guard does not currently plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If the Coast Guard determines that one would aid this rulemaking, the Coast Guard will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

ASTM American Society for Testing and Materials
CFR Code of Federal Regulations
COLREG International Regulations for Preventing Collisions at Sea
DHS Department of Homeland Security
EPA Environmental Protection Agency
FRP Fiber Reinforced Plastic
GSA General Services Administration
IMO International Maritime Organization
ISO International Organization for Standardization
LSA Life-saving Appliance
MSC Maritime Safety Committee of the International Maritime Organization
NAICS North American Industry Classification System
NEPA National Environmental Policy Act 1969 (42 U.S.C. 4321–4370f)
NTTAA National Technology Transfer and Advancement Act (15 U.S.C. 272 note)
OCMI Officer in Charge, Marine Inspection
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
SOLAS International Convention for Safety of Life at Sea, 1974, as amended
§ Section symbol
UL Underwriters Laboratories
USCG United States Coast Guard

III. Background

The Coast Guard is charged with ensuring that lifesaving equipment used on vessels subject to inspection by the United States meets specific design, construction, and performance standards, including those found in the International Convention for the Safety of Life at Sea, 1974, as amended, (SOLAS), Chapter III "Life-saving appliances and arrangements." *See* 46 U.S.C. 3306. The Coast Guard carries out this charge through the approval of lifesaving equipment per 46 CFR part 2, subpart 2.75. The approval process includes: pre-approving lifesaving equipment designs, overseeing prototype construction, witnessing prototype testing, and monitoring production of the equipment for use on U.S. vessels. *See* 46 CFR part 159. At each phase of the approval process, the Coast Guard sets specific standards to which lifesaving equipment must be built and tested. Third parties, referred to as independent laboratories, sometimes assist the Coast Guard in its approval process by performing or witnessing tests and inspections, as well as witnessing production, as authorized by the Coast Guard. *See, e.g.,* 46 CFR 160.151–13(a) (manufacturers must arrange for an independent laboratory to inspect a liferaft during fabrication). This rulemaking would revise those specific standards for launching appliances, release mechanisms, survival craft, rescue boats, and automatic disengaging devices, and expand the use of independent laboratories in the Coast Guard's approval process.

A. International Standards

International safety standards are established by the Parties, including the United States, to SOLAS acting at the International Maritime Organization (IMO). The international standards for lifesaving equipment (IMO standards) addressed by this rulemaking implement the requirements of Chapter III of SOLAS. The IMO standards specify design, construction, performance, and testing requirements for required lifesaving equipment, including launching appliances, release mechanisms, survival craft, rescue boats, and automatic disengaging devices. The primary IMO standards implementing Chapter III of SOLAS are—

- International Life-saving Appliance Code ("LSA Code") (IMO Resolution MSC.48(66), as amended by IMO Resolutions MSC.207(81), MSC.218(82) and MSC.272(85)); *see* SOLAS Chapter III, Regulation 4; and
- Revised recommendation on testing of life-saving appliances ("Recommendation on Testing") (IMO Resolution MSC.81(70)), as amended by Resolution MSC.226(82) and Resolution MSC.274(85); *see* SOLAS Chapter III, Regulation 4.

The United States actively participated in the negotiations that led to the development of these IMO standards. The Coast Guard considers these IMO standards to represent the best standards for lifesaving appliances and appropriate for lifesaving appliances for all vessels subject to inspection by the United States. Since the effective date of the IMO standards, in order to facilitate international commerce with other contracting governments to SOLAS that follow IMO standards and to achieve the benefits of the increased safety of adhering to these IMO standards, the Coast Guard has decided, pursuant to 46 U.S.C. 3306 and 46 CFR 159.005–7(c), to deem compliance by U.S. flag ships with the IMO standards as compliance with Coast Guard domestic regulations.

In this rulemaking, the Coast Guard proposes to harmonize its regulations for lifesaving equipment with international standards by incorporating the IMO standards into regulations in 46 CFR part 160.

B. Independent Laboratories

The Coast Guard has a long history of recognizing the qualifications of independent laboratories, working under the Coast Guard's oversight, to do work traditionally conducted by Coast Guard inspectors. In 1979, the Coast Guard promulgated 46 CFR part 159 establishing procedures and standards for accepting independent laboratories for witnessing or performing certain tests and conducting inspections for certain equipment and materials requiring Coast Guard approval. *See* 44 FR 73038 (December 17, 1979). The Coast Guard promulgated 46 CFR part 159 under the authority in 46 U.S.C. 481 (1976) (Regulations for vessels subject to Coast Guard).[1] In 1983, Congress revised

[1] In 1979, the authority for 46 CFR part 159 also included 46 U.S.C. 391, which covered "vessels carrying certain cargoes in bulk." The broader authority under 46 U.S.C. 481 covered vessels subject to inspection and certification by the United States Coast Guard and directed "the Secretary of the Department in which the Coast Guard is operating * * * shall prescribe such rules and

Continued

and recodified the maritime laws of the United States moving the relevant authority for 46 CFR part 159 to new 46 U.S.C. 3306.[2] *See* Public Law 98–89 Partial Revision of Title 45, U.S.C. "Shipping"; House Report No. 98–338 (August 1, 1983), 1983 U.S.C.C.A.N. 924, 954–53.

The authority for current 46 CFR part 159 is 46 U.S.C. 3306, which "contains broad authority to prescribed regulations for proper inspection and certification of vessels," House Report No. 98–338 (August 1, 1983), 1983 U.S.C.C.A.N. 924, 954–53, including the specific requirement to prescribed regulations to carry out the statutory requirements "in the most effective manner," 46 U.S.C. 3306(a). The Coast Guard still finds the use of independent laboratories in the Coast Guard's approval process to be "the most effective manner" of executing and carrying out its obligations under section 3306.

Independent laboratories, accepted by the Coast Guard under 46 CFR part 159, assist the Coast Guard in its approval process by performing certain tests and conducting certain inspections required for Coast Guard approval of equipment and materials. When performing and conducting tests, independent laboratories must follow Coast Guard standards and procedures, and may deviate from those standards and procedures only to require more stringent standards and procedures with Coast Guard approval. 46 CFR 159.007–3. Additionally, all accepted independent laboratories must be impartial and disinterested in the outcome of inspections and tests. *See* 46 CFR 159.010–3(a)(3)–(5) (requiring an independent laboratory not be owned or controlled by a manufacturer, vendor, or supplier of materials for the equipment or material to be inspected; not be dependent on acceptance as an independent laboratory to remain in business, and not advertise or promote equipment or materials that the independent laboratory inspects or tests.).

The Coast Guard reviews independent laboratory test and inspection reports when determining the approvability of equipment and materials. The Coast Guard currently allows accepted independent laboratories to witness tests of almost all types of shipboard equipment, including certain lifesaving equipment. *See, e.g.,* 46 CFR 160.010–9(a) (approval and production tests in subpart 160.010, addressing buoyant apparatuses, must be conducted by an independent laboratory); 46 CFR 160.151–13(a) (manufacturers must arrange for an independent laboratory to inspect a prototype liferaft during fabrication); and 46 CFR 160.151–31(a) (production inspections and tests of inflatable liferafts must be carried out in accordance with the procedures for independent laboratory inspection).

Current regulations in 46 CFR part 160, however, require Coast Guard inspectors to be involved in all phases of the approval process of winches, davits, release mechanisms, lifeboats, and rescue boats. *See* 46 CFR part 160, subparts 160.015 (winches), 160.032 (davits), 160.033 (release mechanisms), 160.035 (lifeboats), and 160.056 (rescue boats).

Requiring Coast Guard inspectors to directly perform all phases of the approval process, however, can cause scheduling delays and increased expenses for manufacturers of lifesaving equipment. For example, Coast Guard inspectors are not always able to meet manufacturers' schedules due to competing inspection demands and resource constraints. This can impede productivity and affect the availability of approved equipment for U.S. flag vessels. Third-party certification bodies may qualify as accepted independent laboratories and are often available locally with greater convenience to manufacturers.

Additionally, many manufacturers produce lifesaving equipment for multiple flag nations' vessels, and must have their equipment approved by each nation. Manufacturers often use third-party certification bodies for testing and inspection to satisfy certification requirements from other nations. Unless these third parties are qualified to witness tests and perform inspections on behalf of more than one nation, manufacturers must have their equipment inspected and tested by more than one national representative, which carries potential complications and delays.

The Coast Guard has found, through past experiences with U.S. flag vessel inspections and shipboard equipment approvals, that permitting independent laboratories to do work under appropriate Coast Guard oversight ultimately promotes safety, flexibility, and autonomy by permitting experts from industry to engage more directly in the inspection processes while preserving the Coast Guard's safety and stewardship role in the maritime community.

In this rulemaking, the Coast Guard proposes to extend the use of independent laboratories, under the oversight of Coast Guard inspectors, in the approval process for additional lifesaving equipment. The Coast Guard proposes to require manufacturers to use an independent laboratory for prototype fabrication and production oversight, and provide the option in certain cases for manufacturers to use an independent laboratory, again overseen by the Coast Guard, for pre-approval review and prototype testing oversight.

C. Other Revisions

In this rulemaking, the Coast Guard also proposes to revise the structure of certain subparts affected by this rulemaking, and make additional, confirming appliance-specific changes to these subparts not related to harmonization with international standards or use of independent laboratories.

IV. Discussion of Proposed Rule

The Coast Guard's rules addressing lifesaving equipment are found in 46 CFR part 160. Each subpart addresses a specific type of lifesaving equipment. The Coast Guard proposes to amend these subparts to:

- Harmonize its regulations with IMO standards for launching appliances (winches and davits), release mechanisms, survival craft (lifeboats, inflatable liferafts, and inflatable buoyant apparatuses), and rescue boats, and add new harmonized rules addressing automatic disengaging devices;

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regulations as may be necessary for vessels subject to inspection and certification by the United States Coast Guard with respect to the following matters: (1) Lifesaving equipment, including but not limited to, the number, type, size, capacity, details of construction, methods of operation, stowage, maintenance, manning, use, testing, and inspection of such equipment, and drills and exercises necessary to assure proper functioning and use of such equipment * * *" The Coast Guard determined that the use of independent laboratories for witnessing or performing certain tests and conductions was "necessary" to carry out its responsibilities under this statutory section. In the notice of proposed rulemaking proposing 46 CFR part 159, the Coast Guard explained that "the Coast Guard's marine inspection responsibilities increased while the number of personnel available to perform these inspections has not increased at a comparable rate." 43 FR 49440 (October 23, 1978). The Coast Guard promulgated part 159 to "free some of the Coast Guard's limited field personnel for other duties with no change in the quality of the approved equipment or material." Id.; see also 44 FR 73038 (December 17, 1979) (Final Rule document promulgating part 159).

[2] Section 3306 directs "the Secretary shall prescribed necessary regulations to ensure proper execution of, and to carry out, this part [addressing inspection and regulation of vessels] in the most effective manner for (1) the design, construction, alteration, repair, and operation of those vessels [subject to inspection] * * *; (2) lifesaving equipment and its use; (3) firefighting equipment, its use, and precautionary measures to guard against fire; (4) inspections and tests related to paragraphs (1), (2), and (3) of this subsection; and (5) the use of vessel stores and other supplies of a dangerous nature * * *"

• Incorporate the use of independent laboratories, under Coast Guard oversight, for Coast Guard approval procedures for launching appliances, lifeboats, rescue boats, and release mechanisms, and add such use of independent laboratories to proposed new rules addressing automatic disengaging devices; and

• Revise the structure of certain subparts affected by this rulemaking, and make additional appliance-specific changes to these subparts not related to harmonization with international standards or use of independent laboratories. This revision would include updating, adding, or removing certain standards incorporated by reference and creating a new subpart in 46 CFR part 164 addressing resins used in the construction of lifeboats and rescue boats. These revisions are discussed in more detail in sections *IV.C.* and *D.* below.

A. Harmonization With International Standards

To harmonize Coast Guard requirements for lifesaving equipment affected by this rulemaking with international standards that implement SOLAS Chapter III, the Coast Guard proposes to incorporate those international standards into the proposed rules and provide implementing interpretations of those standards in the proposed rules, as appropriate.

The Coast Guard proposes to incorporate by reference, into the affected subparts, the following international standards—

• International Life-saving Appliance Code (IMO Resolution MSC.48(66), as amended by IMO Resolutions MSC.207(81), MSC.218(82) and MSC.272(85));

• Revised recommendation on testing of life-saving appliances (IMO Resolution MSC.81(70), as amended by Resolution MSC.226(82) and Resolution MSC.274(85));

• MSC Circular 980, Standardized life-saving appliance evaluation and test report forms;

• MSC Circular 1006, Guidelines On Fire Test Procedures For Acceptance Of Fire-Retardant Materials For The Construction Of Lifeboats;

• MSC.1 Circular 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems;

• IMO Resolution A.658(16) Use and Fitting of Retro-reflective Materials on Life-saving Appliances; and

• IMO Resolution A.760(18) Symbols Related to Life-Saving Appliances and Arrangements.

Additionally, the Coast Guard proposes to include interpretations of certain portions of these IMO documents for each type of equipment, as appropriate, in the affected subparts. These proposed interpretations, the equipment affected, and the location of the interpretations in the proposed rules are discussed below in Table 1: IMO Standards and Coast Guard Proposed Interpretations. The Coast Guard seeks comment on these interpretations.

TABLE 1—IMO STANDARDS AND COAST GUARD PROPOSED INTERPRETATIONS

International standard	USCG proposed interpretation	Equipment affected in proposed rule
LSA Code Chapter I/1.2, General requirements for all lifesaving appliances.	USCG would require manufacturers to follow the guidance of ASTM F 1166 for standard human engineering practices in the design.	• Release mechanisms: § 160.133–7(b)(2); • Lifeboats: § 160.135–7(b)(1)(ii); • Rescue boats: § 160.156–7(b)(1)(ii); • Automatic liferaft disengaging devices: § 160.170–7(b)(2).
LSA Code Chapter I/1.2, General requirements for all lifesaving appliances.	USCG would require lifesaving equipment, with the exception of fully enclosed lifeboats, be designed for use by persons wearing immersion suits.	• Release mechanisms: § 160.133–7(b)(1); • Lifeboats: § 160.135–7(b)(1)(i); • Rescue boats: § 160.156–7(b)(1)(i); • Automatic liferaft disengaging devices: § 160.170–7(b)(1).
LSA Code Chapter I/1.2.2.1, Addressing materials and workmanship for all life-saving appliances.	USCG would require: ..... 1. Manufacturers to use steel and other materials that meet specific requirements. 2. Joined materials to be compatible and meet requirements for their mechanical connections. 3. Welder certifications for all welders ..... 4. Hydraulic systems used in lifesaving systems to conform to 46 CFR 58.30.	• Winches: § 160.115–7(b); • Davits: § 160.132–7(b); • Release mechanisms: § 160.133–7(b); • Lifeboats: § 160.135–7(b); • Rescue boats: § 160.156–7(b); • Automatic liferaft disengaging devices: § 160.170–7(b).
LSA Code Chapter I/1.2.2.6, Color of life-saving appliances [this also affects LSA Code Chapter IV/4.5 and 4.6 for lifeboats].	USCG would require the exterior color to be only vivid reddish-orange with certain exceptions provided.	• Lifeboats: § 160.135–7(b)(24); • Rescue boats: § 160.156–7(b)(26).
LSA Code Chapter I/1.2.2.7, Retroreflective material.	USCG would require retroreflective material be USCG approved under 46 CFR 164.018.	• Lifeboats: § 160.135–7(b)(27); • Rescue boats: § 160.156–7(b)(28).
LSA Code Chapter I/1.2.2.9, Marking of approved equipment.	USCG would require equipment be marked as approved.	• Winches: § 160.115–17; • Davits: § 160.132–17; • Release mechanisms: § 160.133–17; • Lifeboats: § 160.135–17; • Rescue boats: § 160.156–17; • Automatic liferaft disengaging devices: § 160.170–17.
LSA Code Chapter IV/4.1.5.1.5.	USCG would specify sea anchor attachment point	• Liferafts: § 160.151–21(e).
LSA Code Chapter IV/4.1.3.3 and 4.1.3.4.	USCG would require both interior and exterior canopy lamps to be approved under approval series 161.101.[3]	• Liferafts: § 160.151–15(n).

TABLE 1—IMO STANDARDS AND COAST GUARD PROPOSED INTERPRETATIONS—Continued

International standard	USCG proposed interpretation	Equipment affected in proposed rule
LSA Code Chapter IV/4.2, Addressing inflatable liferafts.	USCG would adopt the LSA Code recommendation that inflation systems meet the requirements of ISO 15738.	• Liferafts and inflatable buoyant apparatus: § 160.151–15(l).
LSA Code Chapter IV/4.4.1, Construction of lifeboats.	USCG would require boats be constructed of steel, aluminum, or fiber reinforced plastic (FRP), or materials accepted by the Commandant as equivalent or superior.	• Lifeboats: § 160.135–7(b)(3); • Rescue boats: § 160.156–7(b)(3); • Resins: § 164.017.
LSA Code Chapter IV/4.4.4, Lifeboat buoyancy.	USCG would require buoyancy material meet acceptance criteria set by Commandant.	• Lifeboats: § 160.135–7(b)(5); • Rescue boats: § 160.156–7(b)(3)(5).
LSA Code Chapter IV/4.4.6, Lifeboat propulsion.	USCG would require lifeboat and rescue boat engines and associated components meet acceptance criteria set by Commandant. USCG would require engines also be U.S. EPA certified to the appropriate emissions tier.	• Lifeboats: § 160.135–7(b)(6)–(10); • Rescue boats: § 160.156–7(b)(7)–(11).
LSA Code Chapter IV/4.4.7, Lifeboat fittings.	USCG would require certain fittings and components on lifeboats and rescue boats required by the LSA Code to meet specific criteria.	• Lifeboats: § 160.135–7(b)(11)–(20); • Rescue boats: § 160.156–7(b)(12)–(23).
LSA Code Chapter IV/4.4.7.6, Addressing release mechanisms for lifeboats to be launched by a fall or falls, except free-fall lifeboats.	USCG would specify additional requirements for the operation and performance of release mechanisms including a requirement for a corrosion resistant and weatherproof instruction placard.	• Release mechanisms: § 160.133–7(b).
LSA Code Chapter IV/4.4.7.10 and 4.4.7.11, Manually controlled lamp and exterior light.	USCG would require both interior and exterior lamps or lights to be approved by the Commandant under approval series 161.101.	• Lifeboats: § 160.135–7(b)(19); (20); • rescue boats: § 160.156–7(b)(20); (21).
LSA Code Chapter IV/4.4.7.12, Adequate view from the control and steering position.	USCG would require performance criteria for visibility from the operator's station.	• Lifeboats: § 160.135–7(b)(2); • Rescue boats: § 160.156–7(b)(2).
LSA Code Chapter IV/4.4.8, Lifeboat equipment.	USCG would require lifeboat and rescue boat equipment required by the LSA Code meet the requirements of 46 CFR 199.175.	• Lifeboats: § 160.135–7(b)(21); • Rescue boats: § 160.156–7(b)(25).
LSA Code Chapter IV/4.8, Lifeboats with a self-contained air support system.	USCG would require the air bottles used in self-contained air support systems meet the requirements of 46 CFR 147.60.	• Lifeboats: § 160.135–7(b)(25).
LSA Code Chapter IV/4.7.6, Addressing release systems for free-fall lifeboat.	USCG would require specific operational and launching requirements, including hydraulic systems, for free-fall boats.	• Free-fall lifeboats: § 160.133–7(b)(12)–(13).
LSA Code chapter VI/6.1.1.3, Gravity powered lowering.	USCG would require a clutch to disengage winch power during lowering.	• Winches: § 160.115–7(b)(6)(ii).
LSA Code Chapter VI/6.1.1.4, Accessibility of parts requiring maintenance.	USCG would require moving parts to have suitable guards.	• Winches: § 160.115–7(b)(3); • Davits: § 160.132–7(b)(3).
LSA Code Chapter VI/6.1.1.9, Winch motors.	USCG would require winch motors to meet applicable requirements of 46 CFR 58.30 (if hydraulic), or 46 CFR 111 (if electric).	• Winches: § 160.115–7(b)(6).
LSA Code Chapter VI/6.1.1.10, Embarkation time standards.	USCG would require winches used to launch davit-launched inflatable liferafts to have a quick return mechanism.	• Winches: § 160.115–7(b)(7).
LSA Code Chapter VI/6.1.2.2, Arrangement of launching mechanism controls.	USCG would specify arrangement of portable power outlet and emergency disconnect switch.	• Winches: § 160.115–7(b)(6)(iv)–(v).
LSA Code Chapter VI/6.1.2.4, Arrangement of winch drums.	USCG would require drums be arranged to ensure even winding of falls onto and off multiple-drum winches.	• Winches: § 160.115–7(b)(5).
LSA Code Chapter VI/6.1.2.6, Hand gears.	USCG would require power be disconnected for engaging hand crank.	• Winches: § 160.115–7(b)(6)(iii).
LSA Code Chapter VI/6.1.2.7, Safety devices for powered recovery.	USCG would specify requirements for limit switches	• Winches: § 160.115–7(b)(6)(vi).
LSA Code Chapter VI/6.1.2.12, Manual brakes.	USCG would require winch brake be positively controlled.	• Winches: § 160.115–7(b)(6)(i).
LSA Code Chapter VI/6.1.5, Liferaft launching appliances.	USCG would specify design and performance requirements.	• Liferaft automatic release hooks: § 160.170–7(b).

TABLE 1—IMO STANDARDS AND COAST GUARD PROPOSED INTERPRETATIONS—Continued

International standard	USCG proposed interpretation	Equipment affected in proposed rule
Resolution MSC.81(70) part 1.	USCG would require a visual inspection demonstrating conformance with approved plans.	• Winches: § 160.115–13(d); • Davits: § 160.132–13(d); • Release mechanisms: § 160.133–13(d); • Lifeboats: § 160.135–13(d); • Rescue boats: § 160.156–13(d); • Automatic liferaft disengaging devices: § 160.170–13(d).
Resolution MSC.81(70) part 1/6.9, On-load/off-load release mechanism tests.	USCG would require additional prototype test criteria for release mechanisms.	• Release mechanisms: § 160.133–13(d).
Resolution MSC.81(70) part 1/6 and 7, Lifeboat and rescue boat tests.	USCG would allow release mechanism and engine tests to be performed independent of the boat.	• Lifeboats: § 160.135–13(d); and • Rescue boats: § 160.156–13(d).
MSC.81(70) part 1/6 and 7, Lifeboat and rescue boat tests.	USCG would require additional tests with supplementary requirements.	• Lifeboats: § 160.135–13(d); and • Rescue boats: § 160.156–13(d).
Resolution MSC.81(70) part 1/8.2, Davit-launched liferaft automatic release hook tests.	USCG would require additional prototype test criteria for release mechanisms.	• Liferaft automatic release hooks: § 160.170–13(d).
MSC.81(70) part 2/1.2, Addressing quality control procedures and production test record retention.	USCG would require specific provisions for the implementation of the quality control program required by the LSA Code.	• Winches: § 160.115–15(b); • Davits: § 160.132–15(b); • Release mechanisms: § 160.133–15(b); • Lifeboats: § 160.135–15(b); • Rescue boats: § 160.156–15(b); • Automatic liferaft disengaging devices: § 160.170–15(b).

[3] The definition for approval series can be found in 46 CFR 199.30.

Additional proposed changes to regulations addressing the design, construction, and performance of lifesaving equipment, not discussed above in Table 1: IMO Standards and Coast Guard Proposed Interpretations, are discussed for each lifesaving equipment type in sections *IV.C. Affected Subparts: Revised and Proposed* and *IV.D. Structure of Part 160 Proposed Subparts.*

B. Independent Laboratories

To incorporate the use of independent laboratories into the approval process for lifesaving equipment, the Coast Guard proposes to—

• Provide the option, on a case-by-case basis and at the discretion and under the oversight of the Commandant (CG–5214) (the Lifesaving and Fire Safety Division), for manufacturers to use an independent laboratory for pre-approval review;

• Require manufacturers to use an independent laboratory for prototype fabrication oversight;

• Provide the option, on a case-by-case basis and at the discretion and under the oversight of the Commandant (CG–5214), for manufacturers to use an independent laboratory for prototype testing oversight; and

• Require manufacturers to use a Coast Guard accepted independent laboratory, rather than a Coast Guard inspector, for production oversight and quality control.

The Coast Guard proposes to define the term "independent laboratory" in each affected subpart by referring to the definition of the term in 46 CFR 159.010–3, which includes commercial testing laboratories, as well as "classification societies and agencies of governments that are involved in the inspection and testing of marine safety equipment that meet the requirements of § 159.010–3." As discussed above, 46 CFR part 159 contains the Coast Guard's established standards and procedures for accepting and recognizing third parties as independent laboratories. The Coast Guard proposes to use this term for consistency with subpart 159 as well as other subparts contained in 46 CFR parts 159 through 164 (subchapter Q) and to reinforce that the same acceptance standards of 46 CFR 159.010–3 would apply to independent laboratories under the proposed new subparts.

The Coast Guard proposes to rely on these existing regulations and requirements in 46 CFR part 159 to accept and approve independent laboratories that would be involved in the lifesaving equipment process as proposed in this rulemaking.

As discussed above in *III. Background,* the Coast Guard currently has an approval process for lifesaving equipment. Although the Coast Guard typically performs each step of this approval process, independent laboratories have been used in the approval process of buoyant apparatuses and liferafts. *See* 46 U.S.C. 3306(a); 46 CFR 160.010–9, 160.151–13, and 160.151–31. The Coast Guard has used independent laboratories in the approval process since 1982 for buoyant apparatuses (*see* 47 FR 41372 (September 20, 1982) (adding in 46 CFR part 160, subpart 160.010 with the requirements to that approval and production tests must be conducted by an independent laboratory)) and since 1997 for liferafts (*see* 62 FR 25525 (May 9, 1997) (adding 46 CFR part 160, subpart 160.151 with the requirements to that independent laboratory inspect fabrication of the liferaft and carry out production inspections and tests)).

The proposed rules would expand the use of independent laboratories into the approval process for winches, davits, release mechanisms, lifeboats, rescue boats and fast rescue boats, and automatic disengaging devices. The result of the proposed rules would be to provide consistent use of independent laboratories in the Coast Guard approval process for all lifesaving equipment required under the various vessel and facility regulations in titles 33 and 46 of the CFR.

Under the proposed rules, the Coast Guard would be notified of tests and inspections conducted by independent laboratories and would conduct oversight of the procedures, actions, and decisions of the independent laboratories. During the process of acceptance of an independent laboratory, the independent laboratory agrees to provide Coast Guard access to the place where test inspections are performed to verify information submitted and witness tests and inspections. 46 CFR 159.010–5(a)(7). Additionally, the proposed rules includes additional Coast Guard oversight of independent laboratories by stating the manufacturer may not proceed with the next phase of the approval process until it receives notification that the current phase, including those phases performed by independent laboratories, is satisfactory to the Coast Guard. The Coast Guard would remain the sole issuer of certificates of approval for Coast Guard-approved lifesaving equipment. *See* 46 CFR part 2, subpart 2.75.

The Coast Guard proposes to require the use of independent laboratories to oversee prototype fabrication, production of approved equipment, and quality control because these phases do not require any decisions regarding the approvability of lifesaving equipment, and only require ensuring the equipment generally conforms to approved designs and required performance standards. Approvability of lifesaving equipment is evaluated during pre-approval review and prototype testing. If the Coast Guard reviews design plans and confirms that a prototype was constructed to those plans and performs as required, then the Coast Guard has been involved in the most critical aspects of lifesaving equipment manufacturing. New design or performance issues are most likely to appear during the process of preapproval plan review and prototype testing, not during prototype fabrication, production of approved equipment, and quality control.

The Coast Guard proposes to allow the use of independent laboratories during preapproval plan review and prototype testing, but only on a case-by case basis and at the discretion and under the oversight of the Commandant (CG–5412). Because preapproval plan review and prototype testing phases involve decisions about the acceptability and approvability of lifesaving equipment design and performance, the Coast Guard intends to permit the use of independent laboratories in these phases only for conventional designs that do not substantially differ from designs already approved by the Coast Guard. The Coast Guard expects that this proposal would free up Coast Guard headquarters staff for the evaluation of novel advances and innovations in lifesaving equipment. Additionally, the Coast Guard aims to relieve manufacturers of the burden of having the same design reviewed, or the same prototype tested, by multiple nations to ensure it complies with the same international standards. If an independent laboratory is accepted as such by several nations, then manufacturers could have their conventional designs reviewed, and prototypes of those conventional designs tested, by one independent laboratory for approval in all of those nations.

1. Preapproval Plan Review: Winches, Davits, Release Mechanisms, Lifeboats, Rescue Boats and Fast Rescue Boats, and Automatic Disengaging Devices

Proposed §§ 160.115–9(c), 160.132–9(c), 160.133–9(c), 160.135–9(c), 160.156–9(c), 160.170–9(c) would provide for the use of an independent laboratory for preapproval plan review at the request of the manufacturer and at the discretion of the Commandant (CG–5214). An independent laboratory would conduct preapproval plan review in accordance with the procedures agreed upon during the course of Coast Guard acceptance of the laboratory under 46 CFR part 159, subpart 159.010. The scope of the independent laboratory's approval authority and the applicable plan review procedures would be determined during the independent laboratory's acceptance process under 46 CFR part 159, subpart 159.010. As discussed above, the Coast Guard proposes that the Commandant (CG–5214) would exercise its discretion to delegate preapproval plan review to an independent laboratory primarily for routine review of conventional, non-novel designs that meet industry standards to free up Coast Guard headquarters staff for the evaluation of novel advances and innovations in lifesaving equipment. The Coast Guard does not anticipate delegating this performance in any instances that require independent laboratories to use their own discretion as to what would be acceptable to the Coast Guard.

This rulemaking would not affect the Coast Guard's control over the issuance of Coast Guard certificates of approval. *See* 46 CFR part 2, subpart 2.75. Additionally, under this proposal, the Coast Guard would conduct oversight of the plan review procedures used by the independent laboratories and handle any appeals under 46 CFR part 159.

2. Witnessing Prototype Fabrication: Lifeboats, and Rescue Boats and Fast Rescue Boats

The Coast Guard proposes to add the use of an independent laboratory for witnessing prototype fabrication in proposed §§ 160.135–11 and 160.156–11. Because fabrication of lifeboats, rescue boats, and fast rescue boats is more complex as compared to fabrication of winches, davits, release mechanisms, and automatic disengaging devices, only the proposed rules for the former types of lifesaving equipment would require oversight during prototype fabrication.

Proposed paragraph (b) of these sections would require that an independent laboratory oversee specified fabrication, inspections, and tests, unless directed otherwise by the Commandant (CG–5214). As discussed above, the Coast Guard intends oversight during prototype fabrication to ensure that a lifesaving equipment prototype is constructed in accordance with the plans approved by the Coast Guard during preapproval review. During this phase, the independent laboratory would ensure that the manufacturer is following Coast Guard direction. The Coast Guard would retain the right to oversee this phase of the approval process. *See* proposed §§ 160.135–11(b) and 160.156–11(b).

Proposed paragraphs (c) of these sections would require steps for the manufacturer to coordinate with the independent laboratory to ensure that fabrication of the product complies with the approved plans.

3. Prototype Testing: Winches, Davits, Release Mechanisms, Lifeboats, Rescue Boats and Fast Rescue Boats, and Automatic Disengaging Devices

The Coast Guard proposes to include the requirements for the prototype testing phase as detailed in proposed §§ 160.115–13, 160.132–13, 160.133–13, 160.135–15, 160.156–13, and 160.170–13. In these sections, proposed paragraph (b) would require that the Coast Guard conduct the inspections and tests required for prototype testing. Proposed paragraph (f), however, would permit an independent laboratory to perform the inspections and tests at the request of the manufacturer and at the discretion of the Commandant (CG–5214), similar to the proposed procedures for preapproval plan review. An independent laboratory would have to conduct prototype testing oversight in accordance with the procedures agreed upon during Coast Guard acceptance of the laboratory under 46 CFR 159.010–5. As with the preapproval plan review,

the Coast Guard proposes that the Commandant (CG–5214) would exercise its discretion to delegate prototype testing oversight to an independent laboratory. This would primarily be for testing conventional designs that do not require direct oversight by the Coast Guard because they do not contain any novel features or substantially depart from similar designs previously approved by the Coast Guard. Under this proposal, the Coast Guard would conduct oversight of procedures used by the independent laboratories for testing and handle any appeals under 46 CFR part 159.

4. Production and Quality Control: Winches, Davits, Release Mechanisms, Lifeboats, Rescue Boats and Fast Rescue Boats, and Automatic Disengaging Devices

Proposed §§ 160.115–15, 160.132–15, 160.133–15, 160.135–15, 160.156–15, and 160.170–15 would require that an independent laboratory oversee production fabrication, inspections, and tests, unless directed otherwise by the Commandant (CG–5214). Independent laboratory oversight during production and quality control would ensure that all production of approved lifesaving equipment conforms with the plans approved and the prototype tested by the Coast Guard. During this phase, as with prototype fabrication, the independent laboratory would ensure that the manufacturer is following Coast Guard direction.

Proposed paragraph (a) of these sections would require that an independent laboratory conduct all inspections, tests, and oversight in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007, unless directed otherwise by the Commandant (CG–5214). Under proposed paragraph (a) of these sections, the Coast Guard would retain the right to oversee this phase of equipment approval, as well as prescribe additional tests and inspections necessary to maintain quality control and monitor compliance.

Proposed §§ 160.115–15, 160.132–15, 160.133–15, 160.135–15, 160.156–15, and 160.170–15 would also outline the proposed roles and responsibilities for independent laboratories and manufacturers for the production and quality control of lifesaving equipment. *See* proposed paragraphs (b) and (d) of these sections. The Coast Guard would continue to conduct oversight of production testing and manufacturer quality control though its monitoring of independent laboratories under 46 CFR part 159.

Proposed paragraph (c) of these sections explains the proposed recordkeeping responsibilities for manufacturers and independent laboratories. Proposed paragraph (e) of these sections details proposed procedures for how and when to witness tests.

C. Affected Subparts: Revised and Proposed

Part 160 in 46 CFR addresses lifesaving equipment generally and is divided into subparts (*e.g.* 46 CFR part 160, subpart 160.[subpart number]) that each address a specific type of lifesaving equipment. In the current structure of 46 CFR part 160, the Coast Guard has traditionally numbered its subparts according to whether the lifesaving equipment addressed by the subpart is approved for use on vessels on coastwise routes and other non-international voyages, or for use on vessels on international voyages and therefore subject to SOLAS. Subparts with ".0" (*e.g.* 46 CFR part 160, subpart 160.0[remainder of subpart number]) generally apply to equipment approved for use on vessels on coastwise routes and other non-international voyages, and subparts with ".1" (*e.g.* 46 CFR part 160, subpart 160.1[remainder of subpart number]) apply to lifesaving equipment approved as meeting the SOLAS requirements for use on vessels on international voyages.

In this rulemaking, the Coast Guard proposes to revise subparts, remove subparts with ".0" and replace them with new subparts with ".1", and add other new subparts to 46 CFR parts 160 and 164. The Coast Guard also proposes to add a new subpart to parts 160 and 164 to specifically state that the existing and proposed new and revised regulations in these parts preempt State and local regulation in the same field. For more discussion on preemption and this rulemaking, see section *VI. E. Federalism,* below.

The Coast Guard proposes to revise, remove, replace, and add subparts in 46 CFR parts 160 and 164 as follows:

- Revise 46 CFR part 160, subparts 160.010 (buoyant apparatus), 160.051 (inflatable liferafts for domestic service), and 160.151 (inflatable liferafts—SOLAS).
- Remove 46 CFR part 160, subparts 160.015 (winches), 160.032 (davits), 160.033 (release mechanisms), and 160.035 (lifeboats), and replace them with new subparts 160.115, 160.132, 160.133, and 160.135, respectively.
- Create new 46 CFR part 160, subparts 160.156 (rescue boats and fast rescue boats) and 160.170 (liferaft automatic release mechanisms).
- Create new 46 CFR part 160, subpart 160.900 (Preemption).
- Create new 46 CFR part 164, subpart 164.017 (Fire retardant resins for lifeboats and rescue boats).
- Create new 46 CFR part 164, subpart 164.900 (Preemption).

For liferafts (subparts 160.051 and 160.151) and rescue boats (subparts 160.056 and 160.156), the Coast Guard would continue to maintain two sets of regulations for this equipment based on voyage: domestic and international approval standards. For lifeboats (subpart 160.135), launching appliances—davits and winches—(subparts 160.132 and 160.115), and release mechanisms (subparts 160.133 and 160.170), however, there will be no corresponding domestic approval standards. The Coast Guard considers the standards for this equipment, as described in this proposed rule, to be appropriate to all U.S. flag vessels regardless of voyage.

For buoyant apparatuses (subpart 160.010) there would be no corresponding international approval standard. Because buoyant apparatuses do not meet the carriage requirements for vessels on international routes, and are not addressed in SOLAS, there is no need for an international approval subpart addressing buoyant apparatuses.

If the proposed rule is made final, all equipment approved after the effective date of the final rule would be required to conform to the appropriate revised, replaced, or added subparts. After the effective date of the final rule, winches, davits, lifeboats, and lifeboat release mechanisms approved under the subparts proposed for removal (subparts 160.015, 160.032, 160.033, and 160.035) could continue to be used as replacements-in-kind as permitted under the applicable vessel inspection subchapters of the CFR, but could not be used for new installations. Manufacturers of liferafts would have to demonstrate that designs previously approved under the current regulations comply with the revised regulations prior to the expiration of their current approvals. Liferafts in service previously approved under the current regulations would not have to be replaced, provided that they remain in serviceable condition. *See* proposed §§ 160.051–1 and 160.151–1. However, when they become non-serviceable, and thus must be replaced, they would have to be replaced with a liferaft that conforms to the revised subpart.

1. Revised 46 CFR Part 160, Subpart 160.010—Buoyant Apparatuses

Current subpart 160.010 contains regulations regarding design,

construction, and approval of buoyant apparatuses. The Coast Guard proposes to retain this subpart because buoyant apparatuses are used only on coastwise and other non-ocean or non-international routes. *See* 46 CFR 199.630(a) (table referencing buoyant apparatus for Coastwise; Great Lakes; Lakes, Bays, & Sounds routes). The Coast Guard proposes to update the references to international standards for inflatable liferafts that the Coast Guard has already applied to inflatable buoyant apparatuses and incorporated into the existing regulations. *See* proposed 46 CFR 160.010–1(c). These inflatable liferaft standards are suitable standards to apply to inflatable buoyant apparatuses because of the similarity between inflatable buoyant apparatuses and inflatable liferafts. Subpart 160.010 already incorporates IMO standards, but the incorporated standards are currently outdated due to the transfer of part C of SOLAS chapter III to the IMO LSA Code. Coast Guard interpretations of these standards as applied to inflatable buoyant apparatuses are discussed above in Table 1: IMO Standards and Coast Guard Proposed Interpretations.

2. Revised 46 CFR Part 160, Subparts 160.051 and 160.151—Inflatable Liferafts

Current subparts 160.051 and 160.151 contain regulations regarding design, construction, and approval of inflatable liferafts for domestic service, and inflatable liferafts that are SOLAS compliant for international service, respectively. These subparts already incorporate IMO standards, but as discussed above, the incorporated standards are currently outdated. The Coast Guard proposes to retain these subparts and update the IMO standards incorporated. Those IMO standards and Coast Guard interpretations of those standards are discussed above in Table 1: IMO Standards and Coast Guard Proposed Interpretations. The Coast Guard proposes changing the requirement for replacing survival equipment items in § 160.151–57(b)(5)(i) from "replaced if its expiration date has passed" at the time of servicing to "replaced at the time of servicing if there is less than 6 months remaining before the expiration date," to harmonize with the recommendation found in IMO Resolution A.761(18) and prevailing international practice.

The Coast Guard also proposes to amend the requirement in 46 CFR 160.151–21(e) to specify where on the liferaft the sea anchor should be attached. Recently, the Coast Guard became aware that the positioning of sea anchors on some liferafts may pose a safety issue. While the IMO standards and Coast Guard regulations address sea anchors, they do not specifically address their positioning; requiring only that the sea anchor will cause the liferaft to lie oriented to the wind in the most suitable manner (LSA Code 4.1.5.1.5). The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) brought to the Coast Guard's attention that the lack of a more specific positioning requirement could potentially endanger the lives of personnel onboard a liferaft. The industry has observed that when the sea anchor is tied-off at the entry door, it can interfere with boarding the liferaft, and keeps the raft entry oriented towards the oncoming seas and wind, potentially jeopardizing the safety of the liferaft occupants.

In the course of investigating the concerns raised by the CFIVSAC, the Coast Guard has communicated with representatives from all current manufacturers of Coast Guard-approved liferafts. Those manufacturers provided individual feedback and opinions, which influenced the wording of the proposed rule. A majority of the individuals responding recommended that the sea anchor be attached to the raft in a position so as to orient the primary entrance away from the seas as far as practicable, while still allowing the sea anchor to be retrieved by a person inside the raft.

Therefore, proposed 46 CFR 160.151–21(e) would require that sea anchors be attached to the raft in a position so as to orient the primary entrance away from the seas as far as practicable, while still allowing the sea anchor to be retrieved by a person inside the raft.

If you are a manufacturer of sea anchors and/or liferafts and did not have the opportunity to provide feedback and opinions previously, the Coast Guard welcomes your comments now.

3. Proposed 46 CFR Part 160, Subparts 160.115 and 160.132—Launching Appliances—Winches and Davits

Proposed subparts 160.115 and 160.132 contain the proposed regulations regarding design, construction, and approval of launching appliances. Proposed subpart 160.115 addresses winches and proposed subpart 160.132 addresses davits, currently governed by subparts 160.015 and 160.032, respectively. Proposed subparts 160.115 and 160.132 retain many of the requirements in subparts 160.015 and 160.032, respectively, as discussed below in section *IV.D. Structure of Part 160 Proposed Subparts.*

Although 46 CFR part 160, subparts 160.015 and 160.032 currently apply only to lifeboat winches and davits, the Coast Guard proposes to expand the scope of the new subparts to also cover launching appliances used for davit-launched rescue boats and liferafts. *See* proposed §§ 160.115–1 and 160.132–1. The Coast Guard has determined that the same basic LSA Code standards apply to liferaft and rescue boat launching appliances as well as lifeboat and rescue boat launching appliances. Therefore, the Coast Guard proposes to address all launching appliances used to launch a lifeboat, rescue boat, or davit-launched liferaft in proposed subparts 160.115 and 160.132.

The Coast Guard has, in the past, approved liferaft launching appliances under approval series [4] 160.163 (SOLAS). Current regulations contained in 46 CFR part 199 (subchapter W) and other vessel inspection subchapters refer to approval series 160.163 for requirements for launching appliances for davit-launched liferafts; however, 46 CFR part 160 does not contain a subpart addressing liferaft launching appliances. Based on the expanded scope of the proposed subparts discussed above, the Coast Guard proposes to replace all references to "approval series 160.163" in 46 CFR with the proposed 46 CFR part 160, subparts 160.115 and 160.132, as appropriate for new approvals. Vessels may continue to utilize existing liferaft launching appliances approved under approval series 160.163 prior to the effective date of the rule. *See* proposed §§ 108.550, 117.150, 133.150, 180.150, and 199.150.

4. Proposed 46 CFR Part 160, Subpart 160.133—Release Mechanisms

Proposed subpart 160.133 contains the proposed regulations regarding design, construction, and approval of release mechanisms, which is currently governed by 46 CFR part 160, subpart 160.033 (Mechanical Disengaging Apparatus, Lifeboat, for Merchant Vessels). Proposed subpart 160.133 revises and replaces the regulations in subpart 160.033, as discussed below in section *IV.D. Structure of Part 160 Proposed Subparts.*

5. Proposed 46 CFR Part 160, Subpart 160.135—Lifeboats

Construction of Coast Guard-approved lifeboats is currently governed by 46 CFR part 160, subpart 160.035. Proposed new subpart 160.135 would completely replace subpart 160.035. Proposed subpart 160.135 would

[4] The definition for approval series can be found in 46 CFR 199.30.

address davit launched, as well as free-fall lifeboats, which would change the scope from subpart 160.035. When subpart 160.035 was promulgated, free-fall lifeboats did not exist. Because the same basic IMO standards apply to both types of lifeboats, proposed subpart 160.135 addresses both.

6. Proposed 46 CFR Part 160, Subpart 160.156—Rescue Boats and Fast Boats

Construction of Coast Guard-approved rescue boats is currently governed by 46 CFR part 160, subpart 160.056, which addresses only non-SOLAS compliant, simple boats approved locally by the Officer in Charge, Marine Inspection (OCMI). Proposed subpart 160.156 would contain the proposed regulations regarding design, construction, and approval of rescue boats and fast rescue boats complying with SOLAS. When subpart 160.056 was promulgated, fast rescue boats did not exist. Proposed subpart 160.156, however, would not replace subpart 160.056. The Coast Guard proposes to retain subpart 160.056 as an acceptable alternative rescue boat for certain classes of vessels as permitted by titles 33 and 46 of the CFR.

7. Proposed 46 CFR Part 160, Subpart 160.170—Automatic Disengaging Devices

Currently 46 CFR part 160 does not contain a subpart addressing automatic disengaging devices that can be used to launch liferafts and single fall rescue boats. However, 46 CFR part 199 (subchapter W) makes reference to these devices via approval series 160.170. *See, e.g.,* 46 CFR 199.150(a)(2). The Coast Guard proposes a new subpart 160.170 to incorporate the requirements in the IMO LSA Code and Recommendation on Testing with Coast Guard interpretations of those requirements as discussed above in Table 1: IMO Standards and Coast Guard Proposed Interpretations.

8. Proposed 46 CFR Part 160, Subpart 164.017—Fire Retardant Resins for Lifeboats and Rescue Boats

Currently, the requirements for resins used in the construction of fiberglass-reinforced plastic lifeboats are contained in 46 CFR 160.035–8(b). There are no corresponding requirements in subpart 160.056. Resins, unlike lifesaving equipment, do not receive a certificate of approval from the Commandant (CG–5214), but must still be accepted by the Commandant (CG–5214) for use in the manufacture of Coast Guard-approved lifeboats and rescue boats.

Because of the relative comprehensiveness of the fire retardant resin standards, the Coast Guard proposes to separate the resin requirements from the design, construction, and performance standards and create a new subpart in part 164. Rather than include the resin requirements in proposed subparts 160.135 and 160.156, these proposed subparts would cross-reference 164.017.

Proposed subpart 164.017 would retain the main requirements of 46 CFR 160.035–8(b), including the requirement that manufacturers use independent laboratories to test and certify that their resin meets the proposed requirements and submit an application for acceptance of the resin to the Commandant (CG–5214). The Coast Guard proposes revising the structure of the resin requirements to conform to the structure of a CFR subpart, and would include a scope for the subpart as well as definitions.

The scope of proposed subpart 164.017 would state that the subpart contains performance requirements, acceptance tests, and production testing and inspection requirements for fire retardant resins used in the construction of lifeboats and rescue boats approved under proposed 46 CFR part 160, subparts 160.135 and 160.156. *See* proposed § 164.017–1. The definitions would include a definition of "acceptance" modeled after the definition in 46 CFR 164.019–3, and the definitions for "Commandant" and "independent laboratory" included in each of the proposed new subparts (160.115, 160.132, 160.133, 160.135, 160.156 and 160.170), discussed below under section *IV.D. Structure of Part 160 Proposed Subparts.*

The Coast Guard proposes to update and replace some of the resin standards currently incorporated by reference in 46 CFR 160.035–8(b). The standards proposed for incorporation by reference in proposed subpart 164 would appear in proposed § 164.017–5, and are discussed below in section *IV.D. Structure of Part 160 Proposed Subparts.* The Coast Guard proposes including the use of equivalent international standards as an alternative to national consensus standards. *See* proposed § 164.017–7.

The Coast Guard also proposes to include a new procedure for Coast Guard acceptance of material changes from any resin accepted under proposed subpart 164.017. *See* proposed § 164.017–15.

D. Structure of Part 160 Proposed Subparts

The structure of each of the proposed new subparts in part 160 (subparts 160.115, 160.132, 160.133, 160.135, 160.156 and 160.170) would be similar to aid in readability and familiarity with the proposed rules for the affected lifesaving equipment. Additionally, much of regulatory text addressing the approval process in the proposed new subparts would be substantially similar across the new subparts. The major difference in regulatory text in the new subparts would be the technical requirements for specific lifesaving equipment. The technical requirements affected by IMO standards are discussed in detail in Table 1: IMO Standards and Coast Guard Proposed Interpretations, and any additional equipment-specific proposed requirements are noted in each section below.

The general structure of the proposed new subparts would be as follows:

- § 160.[subpart number]–1 Scope.
- § 160.[subpart number]–3 Definitions.
- § 160.[subpart number]–5 Incorporation by reference.
- § 160.[subpart number]–7 Design, construction, and performance of [name of lifesaving equipment addressed by the subpart].
- § 160.[subpart number]–9 Preapproval review.
- § 160.[subpart number]–11 Fabrication of prototype [name of lifesaving equipment addressed by the subpart] for approval.
- § 160.[subpart number]–13 Approval inspections and tests for prototype [name of lifesaving equipment addressed by the subpart].
- § 160.[subpart number]–15 Production inspections, tests, quality control, and conformance of [name of lifesaving equipment addressed by the subpart].
- § 160.[subpart number]–17 Marking and labeling.
- § 160.[subpart number]–19 Operating instructions and information for the ship's training manual.
- § 160.[subpart number]–21 Operation and maintenance instructions.
- § 160.[subpart number]–23 Procedure for approval of design or material change.

1. Section 160.[subpart number]–1 Scope

This section would state that the subpart prescribes standards, tests, and procedures to seek Coast Guard approval of the specific type of lifesaving equipment addressed by the

proposed new subpart. Proposed differences in the scope between an existing subpart and a proposed subpart to replace that existing subpart are discussed above in section *IV.C. Affected Subparts Revised and Proposed.*

2. Section 160.[subpart number]–3 Definitions

This section would contain the definitions of terms for the proposed new subpart. As discussed above in section *IV.B. Independent Laboratories,* the definition of "independent laboratory" would appear in each subpart and would have the same meaning as the term defined in 46 CFR 159.010–3. The definitions of "Commandant" and "SOLAS" would appear in each subpart. The Coast Guard borrowed these definitions from 46 CFR 160.151–3 and updated them to reflect the Coast Guard's address and recent SOLAS amendments. "Commandant" would mean the Commandant (CG–5214), which is the Lifesaving and Fire Safety Division that administers the Coast Guard approval process for lifesaving equipment. The Coast Guard also proposes adding to each new subpart a definition for "OCMI", an Officer in Charge, Marine Inspection, which is borrowed from 46 CFR 175.400.

This section of the proposed subparts would also contain any definitions specific to a subpart as follows.

Proposed §§ 160.133–3 and 160.170–3 (Release Mechanisms and Automatic Disengaging Devices): These sections would contain two additional definitions: "light load" and "full load" of lifeboats and rescue boats, which also are referred to as the "condition A" and "condition B" weights of the boats.

Proposed §§ 160.135–3 and 160.156–3 (Lifeboats and Rescue Boats and Fast Rescue Boats): These sections would contain the same "light load" and "full load" definitions proposed in § 160.133–3 and would also provide definitions for "fiberglass reinforced plastic (FRP)" and "positive stability."

3. Section 160.[subpart number]–5 Incorporation by reference & Proposed § 164.017–5

Section 160.[subpart number]–5 would list the IMO standards that the Coast Guard proposes to incorporate to harmonize its regulations with international standards. Section 160.[subpart number]–5 would also list other technical standards incorporated by reference that are specific to that particular subpart, and are used in Coast Guard interpretations of the IMO standards. Section 164.017–5 would list technical standards incorporated by reference in proposed new 46 CFR part 160, subpart 164.017. The technical standards in §§ 160.[subpart number]–5 and 164.017–5 include recommended guidelines from IMO that the Coast Guard proposes to incorporate by reference as required standards. IMO standards and other technical standards included in these sections are either new standards or updated from a previous version of a similar standard and are discussed below in Table 2: New and Updated Standards Incorporated by Reference. For more information about incorporation by reference, see section *V. Incorporation by Reference* below.

These sections would use the standards currently incorporated by reference in the subparts the Coast Guard proposes to remove that the Coast Guard has determined are still applicable, and would update other such standards. The Coast Guard would not retain other specifications that are no longer used.

TABLE 2—NEW AND UPDATED STANDARDS INCORPORATED BY REFERENCE

Organization	Title	Description	Equipment affected
American Society for Testing and Materials (ASTM).	A 36/A 36M–08 Standard Specification for Carbon Structural Steel.	Provides a specification for carbon steel shapes, plates, and bars of structural quality for use in bolted or welded construction of the load bearing steel components of lifesaving appliances in column 3.	Davits, release mechanisms, lifeboats, rescue boats, and automatic disengaging devices.
	A 216/A 216M–08 Standard Specification for Steel Castings, Carbon, Suitable for Fusion Welding for High-Temperature Service.	Provides a specification for carbon steel castings for assembly with other castings or wrought-steel parts by fusion welding.	Davits.
	B 127–05(2009) Standard Specification for Nickel-Copper Alloy (UNS N04400) Plate, Sheet, and Strip.	Provides a standard specification for nickel-copper alloys to be used in the construction of fuel tanks.	Lifeboats and rescue boats.
	B 209–07 Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate.	Provides a standard specification for aluminum and aluminum alloys to be used in the construction of lifeboats and rescue boats.	Lifeboats and rescue boats.
	D 543–06 Standard Practices for Evaluating the Resistance of Plastics to Chemical Reagents.	Provides a method for testing FRP to standard test chemical reagents; alternative method to ISO 175.	Lifeboat and rescue boat resins.
	D 570–98(2005) Standard Test Method for Water Absorption of Plastics.	Provides a method to perform a 24-hour water immersion test for FRP; alternative method to ISO 62.	Lifeboat and rescue boat resins.
	D 638–08 Standard Test Method for Tensile Properties of Plastics.	Provides a standard for determining the tensile strength of laminate samples taken from (or representative of) major components of the lifeboat; alternative method to ISO 527.	Lifeboat and rescue boat resins.

TABLE 2—NEW AND UPDATED STANDARDS INCORPORATED BY REFERENCE—Continued

Organization	Title	Description	Equipment affected
	A 653/A 653M–08 Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process.	Provides a specification for steel sheet, zinc-coated (galvanized) or zinc-iron alloy-coated (galvannealed) by the hot-dip process in coils and cut lengths. Steel requiring protective coatings must meet the requirements of A 653.	Release mechanisms, lifeboats, rescue boats, and automatic disengaging devices.
	D 695–(08) Standard Test Method for Compressive Properties of Rigid Plastics.	Provides a method for determining ultimate compressive strength of FRP; alternative method to ISO 604.	Lifeboat and rescue boat resins.
	D 790–07e1 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials.	Provides a standard method for determination of the ultimate strength of laminate samples taken from (or representative of) major components of the lifeboat or rescue boat; alternative method to ISO 14125.	Lifeboat and rescue boat resins.
	D 792–08 Standard Test Methods for Density and Specific Gravity (Relative Density) of Plastics by Displacement.	Provides a method for evaluating the density of cured unfilled resins; an alternative method to ISO 1183–1.	Lifeboat and rescue boat resins.
	D 1045–08 Standard Test Methods for Sampling and Testing Plasticizers Used in Plastics.	Provides a method to determine specific gravity of uncatalyzed liquid resins; an alternative method to ISO 1675.	Lifeboat and rescue boat resins.
	D 1824–95(2002) Standard Test Method for Apparent Viscosity of Plastisols and Organosols at Low Shear Rates.	Provides a method to determine viscosity of uncatalyzed liquid resins; an alternative method to ISO 255.	Lifeboat and rescue boat resins.
	D 2471–99 Standard Test Method for Gel Time and Peak Exothermic Temperature of Reacting Thermosetting Resins.	Provides a method for measuring the maximum temperature (peak exotherm) reached by a reacting thermosetting plastic composition and the time from initial mixing of the reactants of a thermosetting plastic composition to the time when solidification commences (gel time); ISO 2535 provides an alternative to the gel time determination method only.	Lifeboat and rescue boat resins.
	D 2583–07 Standard Test Method for Indentation Hardness of Rigid Plastics by Means of a Barcol Impressor.	Provides a test method for the determination of indentation hardness of both reinforced and nonreinforced rigid plastics using a Barcol Impressor, Model No. 934–1 and Model No. 935; an alternative method to ISO 2039 (series).	Lifeboat and rescue boat resins.
	D 2584–08 Standard Test Method of Ignition Loss of Cured Reinforced Resins.	Provides a test method for the determination of the ignition loss of cured reinforced resins which can be equated to the resin content within limitations defined in the standard; an alternative to ISO 1172.	Lifeboat and rescue boat resins.
	D 4029–09 Standard Specification for Finished Woven Glass Fabrics.	Provides a standard for finished, woven electrical grade fabric in the construction of FRP.	Lifeboats and rescue boats.
	F 1014–02(2007) Standard Specification for Flashlights on Vessels.	Specifies Type I; Type II; and Type III flashlights.	Inflatable liferafts.
	F 1166–07 Standard Practice for Human Engineering Design for Marine Systems, Equipment, and Facilities.	Provides a standard for ergonomic design criteria from a human-machine perspective to be applied to the design and construction of lifesaving appliances listed in column 3.	Inflatable liferafts, release mechanisms, lifeboats, rescue boats, and automatic disengaging devices.

TABLE 2—NEW AND UPDATED STANDARDS INCORPORATED BY REFERENCE—Continued

Organization	Title	Description	Equipment affected
	G 154–06 Standard Practice for Operating Fluorescent Light Apparatus for UV Exposure of Nonmetallic Materials.	Provides a method for the accelerated weathering test of FRP.	Lifeboats and rescue boats.
General Services Administration (GSA).	Federal Standard 595C—Colors Used in Government Procurement.	Provides a standard for vivid reddish orange on the exteriors of the lifesaving appliances listed in column 3.	Lifeboats, rescue boats, buoyant apparatuses, and liferafts.
International Maritime Organization (IMO).	International Life-Saving Appliance Code, (IMO Resolution MSC.48(66), as amended).	Provides the design, construction and performance standard for SOLAS required life-saving appliance.	Davits, winches, release mechanisms, lifeboats, rescue boats, automatic disengaging devices, and buoyant apparatuses.
	IMO Resolution A.657(16) Instructions for Action in Survival Craft.	Provides standardized instructions for people in liferafts.	Liferafts.
	IMO Resolution A.658(16) Use and Fitting of Retro-reflective Materials on Life-saving Appliances.	Provides a standard for retro-reflective material.	Lifeboats, rescue boats, liferafts and buoyant apparatuses.
	IMO Resolution A.760(18) Symbols Related to Life-Saving Appliances and Arrangements.	Provides a standard catalogue of symbols to be used in life-saving appliance manuals and placards.	Davits, winches, release mechanisms, lifeboats, rescue boats, automatic disengaging devices, and buoyant apparatuses.
	IMO Revised Recommendation on testing of life-saving appliances, IMO Resolution MSC.81(70) as amended.	Provides the testing requirements for all life-saving appliances required by SOLAS.	Davits, winches, release mechanisms, lifeboats, rescue boats, automatic disengaging devices, and buoyant apparatuses.
	MSC Circ. 980, Standardized life-saving appliance evaluation and test report forms.	Provides a concise, standard format for documenting prototype testing.	Winches, davits, lifeboats, rescue boats, release mechanisms, and automatic disengaging devices.
	MSC/Circ. 1006, Guidelines On Fire Test Procedures For Acceptance Of Fire-Retardant Materials For The Construction Of Lifeboats.	Provides an alternative to MIL–R–7575C and MIL–R–21607E(SH) for the fire-resistance tests of FRP used in lifeboat construction.	Lifeboat and rescue boat resins.
	MSC.1 Circ. 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems.	Provides a standard format for manufacturers to present their Operations and Maintenance manuals.	Lifeboats, winches, davits, lifeboats, rescue boats, release mechanisms, and automatic disengaging devices.
International Organization for Standardization (ISO).	62:2008 Plastics—Determination of water absorption.	Provides an alternative test method to ASTM D 570.	Lifeboat and rescue boat resins.
	175:1999 Plastics—Methods of tests for the determination of the effects of immersion in liquid chemicals.	Provides an alternative test method to ASTM D 543.	Lifeboat and rescue boat resins.
	14125:1998 Fibre-reinforced plastic composites—Determination of flexural properties.	Provides an alternative test method to ASTM D 790.	Lifeboat and rescue boat resins.
	527–1:1993 Plastics—Determination of tensile properties.	Provides an alternative test method to ASTM D 638.	Lifeboat and rescue boat resins.
	604:2002 Plastics—Determination of compressive properties.	Provides an alternative test method to ASTM D 695.	Lifeboat and rescue boat resins.
	1172:1996 Textile-glass-reinforced plastics—Prepregs, moulding compounds and laminates—Determination of the textile-glass and mineral-filler content—Calcination methods.	Provides an alternative test method to ASTM D 2584.	Lifeboat and rescue boat resins.
	1183–1:2004 Plastics—Methods for determining the density of non-cellular plastics—Part 1: Immersion method, liquid pyknometer method and titration method.	Provides an alternative test method to ASTM D 792.	Lifeboat and rescue boat resins.
	1675:1985 Plastics—Liquid resins—Determination of density by the pyknometer method.	Provides an alternative test method to ASTM D 1045.	Lifeboat and rescue boat resins.
	2039–1:2001 Determination of hardness—Part 1: Ball indentation method.	Provides an alternative test method to ASTM D 2583.	Lifeboat and rescue boat resins.

TABLE 2—NEW AND UPDATED STANDARDS INCORPORATED BY REFERENCE—Continued

Organization	Title	Description	Equipment affected
	2039–2:1987 Determination of hardness—Part 2: Rockwell hardness.	Provides an alternative test method to ASTM D 2583.	Lifeboat and rescue boat resins.
	2114:2000 Plastics (polyester resins) and paints and varnishes (binders)—Determination of partial acid value and total acid value.	Provides an alternative test method to ASTM D 1045.	Lifeboat and rescue boat resins.
	2535:2001 Plastics—Unsaturated-polyester resins—Measurement of gel time at ambient temperature.	Provides an alternative test method of ASTM D 2471.	Lifeboat and rescue boat resins.
	2555:1989 Plastics—Resins in the liquid state or as emulsions or dispersions—Determination of apparent viscosity by the Brookfield test method.	Provides an alternative test method to ASTM D 1824.	Lifeboat and rescue boat resins.
	15372:2000, Ships and marine technology—Inflatable rescue boats—Coated fabrics for inflatable chambers.	Provides a standard for the textiles used in the buoyancy chambers of inflatable and rigid-hull inflatable rescue boats.	Rescue boats.
	15738:2002, Ships and marine technology—Gas Inflation systems for inflatable life-saving appliances.	Provides a standard for inflation systems.	Liferafts.
	17339:2002, Ships and marine technology—Sea anchors for survival craft and rescue boats.	Provides sea anchor construction standards.	Liferafts.
	18813:2006, Ships and marine technology—Survival equipment for survival craft and rescue boats.	Provides construction standards for various survival equipment items.	Liferafts.
Society of Automotive Engineers (SAE).	J1527–93, Marine Fuel Hoses	Provides a standard for USCG type A fuel hoses required on outboard engines.	Rescue boats.
U.S. Military Specification	A–A–55308, Cloth And Strip, Laminated Or Coated, Vinyl Nylon Or Polyester, High Strength, Flexible.	Provides a standard for the cloth used in foldable canopies on partially enclosed lifeboats.	Lifeboats.
	MIL–C–19663D: Cloth, Woven Roving, For Plastic Laminate, 4 AUG 1998.	Provides a standard requirement for "E" glass woven textiles for use in FRP.	Lifeboats and rescue boats.
	MIL–C–17415E—Cloth, Coated, and Webbing, Inflatable Boat and Miscellaneous Use.	Provides a standard for materials to be used for canopy, seam tape, inflatable floor, and other inflatable and structural components.	Liferafts.
	MIL–P–17549D(SH): Plastic Laminates, Fibrous Glass Reinforced, Marine, 31 AUG 1981.	Provides standard minimum mechanical properties of laminate samples taken from finished FRP components, e.g. hull & canopy.	Lifeboats and rescue boats.
	MIL–P–19644 C—Plastic Molding Material (Polystyrene Foam, Expanded Bead).	Provides plastic foam standards ...	Buoyant apparatuses.
	MIL–P–21929 B—Plastic Material, Cellular Polyurethane, Foam-In-Place, Rigid (2 and 4 Pounds per Cubic Foot).	Provides plastic foam standards ...	Buoyant apparatuses.
	MIL–P–40619 A—Plastic Material, Cellular, Polystyrene (For Buoyancy Applications).	Provides plastic foam standards ...	Buoyant apparatuses.
	MIL–R–7575 C—Resin, Polyester, Low Pressure Laminating, 29 June 1966.	Provides standard testing protocols and minimum mechanical properties of FRP test samples for the acceptance of polyester resins used in FRP laminates.	Lifeboat and rescue boat resins.
	MIL–R–21607E(SH), Resins, Polyester, Low Pressure Laminating, Fire-Retardant, 25 May 1990.	Provides a standard for flame resistance of resins used in FRP laminates.	Lifeboat and rescue boat resins.

TABLE 2—NEW AND UPDATED STANDARDS INCORPORATED BY REFERENCE—Continued

Organization	Title	Description	Equipment affected
	MIL–R–24719(SH), Resins, Vinyl Ester, Low Pressure Laminating, 4 May 1989.	Provides standard testing protocols and minimum mechanical properties of FRP test samples for the acceptance of vinyl ester resins used in FRP laminates.	Lifeboat and rescue boat resins.
Underwriters Laboratories (UL)	1102, Standard for Nonintegral Marine Fuel Tanks.	Provides a standard for permanent fuel tanks that are not part of the hull.	Rescue boats.
	1185, Standard for Portable Marine Fuel Tanks.	Provides a standard for portable fuel tanks typically used with outboard engines.	Rescue boats.

4. Section 160.[subpart number]–7 Design, construction, and performance of [name of lifesaving equipment addressed by the subpart]

Section 160.[subpart number]–7 would provide the detailed design, construction, and performance requirements for each equipment type addressed in the proposed new subparts. This section would contain the IMO requirements and other requirements for specific equipment types. The proposed new or revised requirements for each equipment type are discussed in detail in Table 1: IMO Standards and Coast Guard Proposed Interpretations, above. Section 160.[subpart number]–7 would also explicitly state that design, material, and construction equivalence determinations may be made by the Commandant (CG–5214) only. *See* proposed paragraph (c). This section would also contain equipment-specific technical requirements as follows:

Proposed §§ 160.115–7 and 160.132–7 (Launching Appliances—Winches and Davits): The Coast Guard interpretations of the LSA Code and Resolution MSC.81(70), as discussed above in Table 1: IMO Standards and Coast Guard Proposed Interpretations, are taken directly from the existing regulations for winches and davits contained in subparts 160.015 and 160.032, respectively. The Coast Guard would not retain existing requirements from subparts 160.015 and 160.032 that are adequately addressed by the LSA Code, requirements specific to installation and arrangement that are addressed in the various vessel and facility regulations in titles 33 and 46 of the CFR, and requirements applicable to mechanical davits, which are not permitted by the LSA Code and have become obsolete.

Proposed § 160.135–7 (Lifeboats): This section would contain a cross-reference to proposed new subpart 164.017 for the requirements for fire retardant resins. Additionally, because this section would incorporate the lifeboat design and performance requirements of the LSA Code and Resolution MSC.81(70), and the Coast Guard interpretations of those documents, as discussed above in Table 1: IMO Standards and Coast Guard Proposed Interpretations, the Coast Guard would not retain requirements in subpart 160.035 for certain types of obsolete lifeboats as well as obsolete construction techniques. For example, the Coast Guard would not retain requirements for lifeboats that are propelled solely by oar or hand (*e.g.,* Fleming gear), open lifeboats, lifeboats with radio cabins, and steel assembly via riveting. Existing vessels with these types of lifeboats may still be able to replace in-kind provided they meet the criteria in titles 33 and 46 of the CFR.

The Coast Guard also proposes adding the installation of navigation lights in § 160.135–7, when applicable, on lifeboats. Chapter I, Regulation 8(b)(ii) of SOLAS 74, as amended, requires surveys of lifesaving appliances to ensure they are in compliance with the International Regulations for Preventing Collisions at Sea (COLREGS). COLREGS does not contain any exemptions to the navigation light requirements for motor-driven survival craft or rescue boats. Regulation 23 of COLREGS, however, does allow "a power-driven vessel of less than 7 meters in length whose maximum speed does not exceed 7 knots may in lieu of the lights prescribed in paragraph (a) of this Rule exhibit an all-round white light and shall, if practicable, also exhibit sidelights." There are modern lifeboats, as well as rescue boats, that are 7 meters or longer and/or have maximum speeds of over 7 knots. The Coast Guard proposes to require the installation of navigation lights on lifeboats and rescue boats, consistent with the COLREGS requirements. While there is no specific mention of navigation lights in the LSA Code or Resolution MSC.81(70), the Coast Guard interprets SOLAS as requiring them.

Proposed § 160.156–7 (Rescue Boats and Fast Boats): This section would contain essentially identical technical requirements to those for lifeboats in § 160.135–7 with some requirements unique to rescue boats. For example, the Coast Guard would add requirements for coated cloth used in inflatable collars. However, consistent with the LSA Code, air in the inflated collar of a rigid-hull inflatable rescue boat would not be considered inherently buoyant material for the purposes of meeting the LSA Code's requirement for additional buoyant material in chapter IV/4.4.4. The Coast Guard would add fuel system requirements unique to outboard gasoline engines, which are only allowed on rescue boats, see Table 2: New and Updated Standards Incorporated by Reference, above. Further, the requirement regarding navigation lights for lifeboats would also apply to rescue boats. Also unique to rescue boats would be the allowance to use automatic liferaft disengaging devices approved under proposed subpart 160.170 when the rescue boat is of a type suspended on a single fall. This is addressed in Table 1: IMO Standards and Coast Guard Proposed Interpretations; see also 46 CFR 199.160.

5. Section 160.[subpart number]–9 Preapproval review

This section would describe the procedures for requesting preapproval review of a design for the type of lifesaving equipment addressed by the proposed new subpart. Proposed paragraph (b) of this section would contain manufacturer requirements for submitting an application to the Commandant (CG–5214) for approval and clarify the items required in the application. For all equipment, an application for approval would include a master drawing list, detailed arrangement and assembly drawings, a full bill of materials, structural calculations, all required manuals, the proposed quality assurance plan, the

name of the independent laboratory that will conduct prototype and production oversight, and any additional details necessary to demonstrate compliance with the applicable subpart.

Proposed paragraph (d) would contain specifications for plan quality, and proposed paragraph (e) would require that any alternative materials, parts, or construction must be clearly indicated in plans. Proposed paragraph (f) of this section in each subpart states that Coast Guard may suspend review of an application if they do not comply with the requirements of this section.

Section 160.[subpart number]–9 would also contain the Coast Guard's proposal that, in general, this review would be conducted by the Commandant (CG–5214), although the Coast Guard may delegate the preapproval review to an independent laboratory at the Coast Guard's discretion. This proposal is discussed in more detail above in section *IV.B. Independent Laboratories.*

6. Section 160.[subpart number]–11 Fabrication of prototype [name of lifesaving equipment addressed by the subpart] for approval

This section would specify the procedures for the fabrication of prototype equipment for approval and list the manufacturer's and independent laboratory's responsibilities in that process. The responsibilities would include requirements that a manufacturer arranging for fabrication inspections and tests could do so only after receiving notice of meeting the requirements of preapproval review. It would also detail submission of the inspection report to the Commandant (CG–5214). Because fabrication of lifeboats and rescue boats and fast rescue boats is more complex as compared to fabrication of winches, davits, release mechanisms, and automatic disengaging devices, and encompasses certain features (such as fiberglass layup) that cannot be reliably inspected in a finished product, oversight is required at this phase to ensure compliance with the plans submitted for preapproval. Therefore, this proposed section would only appear in proposed new subparts 160.135 and 160.156. In proposed new subparts 160.115, 160.132, 160.133, and 160.170 this section would be reserved.

Section 160.[subpart number]–11 would also contain the Coast Guard's proposal to delegate the performance of the oversight of the prototype construction to the independent laboratory, which must conduct its oversight in accordance with 46 CFR part 159, subpart 159.007. *See* proposed paragraph (b). This proposal is discussed in more detail above in section *IV.B. Independent Laboratories.*

Proposed §§ 160.135–11 (Lifeboats) and 160.156–11 (Rescue boats): In these sections, the Coast Guard would require prototype lifeboats and rescue boats constructed with FRP to be made with unpigmented resins to allow the attending independent laboratory to have a means to visually inspect the construction of the major FRP components, and to be able to see any internal structural damage that occurs during testing. The Coast Guard proposes that the attending independent laboratory witness weighing of each major component constructed of FRP before assembly with other components prior to installation of buoyancy foam and then again with buoyancy foam in place. The Coast Guard also proposes the attending independent laboratory ensure any welding of structural components is accomplished by qualified welders, see also proposed §§ 160.135–7(b)(5) and 160.156–7(b)(4). Further, the Coast Guard proposes the attending independent laboratory inspect the propulsion, steering, and water spray and air support systems after their installation to ensure they are in compliance with the approved prototype plans.

7. Section 160.[subpart number]–13 Approval inspections and tests for prototype [name of lifesaving equipment addressed by the subpart]

This section would list the prototype tests required for approval of lifesaving equipment addressed by the proposed new subparts. This section would contain the minimum prototype tests required for approval as set forth in part 1 of the IMO Revised recommendation on testing. These tests, as well as Coast Guard interpretations of these tests, are discussed in Table 1: IMO Standards and Coast Guard Proposed Interpretations, above.

This section would also contain the Coast Guard's proposal that, in general, the Coast Guard would witness all prototype testing, but the Commandant (CG–5214) may delegate this function to an independent laboratory on a case-by-case basis, as discussed above in section *IV.B. Independent Laboratories.*

8. Section 160.[subpart number]–15 Production inspections, tests, quality control, and conformance of [name of lifesaving equipment addressed by the subpart]

This section would list the production tests that would be required for each equipment type and the manufacturer's and independent laboratory's responsibilities for production quality control of Coast Guard approved equipment. This section would contain procedures and standards for production tests as required by IMO Revised recommendation on testing, part 2. Although part 2 addresses both production tests and installation tests, which are performed after the equipment is installed on the parent vessel, this rulemaking only addresses production tests. Production testing would be conducted at the manufacturing facility, prior to delivery to a vessel and is required before the equipment would be marked as Coast Guard approved. Specific production testing and quality control requirements for each equipment type are discussed in Table 1: IMO Standards and Coast Guard Proposed Interpretations, above. Section 160.[subpart number]–15 would also address the manufacturer's responsibilities for maintaining and keeping records associated with the production process.

Section 160.[subpart number]–15 would cross-reference 46 CFR part 159, subpart 159.007, which contains the Coast Guard's established procedures for performing production inspections and tests, and proposes to delegate the performance of production testing and oversight of the manufacturer's quality control plan to the independent laboratory, as discussed above in section *IV.B. Independent Laboratories.*

9. Section 160.[subpart number]–17 Marking and labeling

Section 160.[subpart number]–17 would set forth the proposed markings for approved equipment as required by the LSA Code and the IMO Revised recommendation on testing. This section would dictate the placement and contents of a plate or label for the specific lifesaving equipment addressed by the proposed subpart. This section would require that labeling be in English. The Coast Guard would require all lifesaving equipment affected by this rule to be marked or stamped with the following information: USCG-issued approval number, the word "SOLAS", manufacturer's name and address (address may be excluded on release mechanisms for space constraints), identifying information of the independent laboratory, model name and serial number, and month/year of manufacture. The Coast Guard would require lifeboats and rescue boats to be marked with the material of the hull construction, e.g. FRP, their A and B weights (see Table 1: IMO Standards and Coast Guard Proposed Interpretations above), and the number of persons it is certificated to carry. The

Coast Guard would also require all launching appliances and release mechanisms to be marked with their safe working loads. The Coast Guard would also require liferaft automatic disengaging devices to be marked with the number of the test certificate attesting to the static proof test required by the Revised recommendation on testing, part 2/6.2.2.

10. Section 160.[subpart number]–19 Operating instructions and information for the ship's training manual

Section 160.[subpart number]–19 would detail the Coast Guard requirements for the information for the ship's training manual required by SOLAS and would specify that IMO symbols be used to describe location and operation of the equipment. This section would also provide that the instructions and information may be combined with other similar material, but they would have to be available in English and be provided in the form of an instruction placard.

11. Section 160.[subpart number]–21 Operation and maintenance instructions

Section 160.[subpart number]–21 would detail the Coast Guard requirements for the operation and maintenance instructions required by SOLAS and would specify that the instructions follow the general format and content specified in IMO MSC.1 Circular 1205, include a checklist for use in monthly, external visual inspections, and use IMO symbols to describe location and operation of the equipment. This section also would provide that the manual may be combined with other similar material, but it must be available in English.

12. Section 160.[subpart number]–23 Procedure for approval of design, material, or construction change

This section would contain the procedures for requesting approval of a design, material, or construction change to approved equipment addressed by that subpart. This section proposes that manufacturers must submit plans for modifying an approved design following the same procedures as for the original approval set forth in § 160.[subpart number]–9. This section also would require a prototype be built and tested, in accordance with §§ 160.[subpart number]–11 and 160.[subpart number]–13, unless waived by Commandant (CG–5214) if deemed appropriate. Finally, this section proposes to explicitly state that design, material, and construction equivalence determinations may be made by the Commandant (CG–5214) only.

V. Incorporation by Reference

Material proposed for incorporation by reference appears in proposed 46 CFR §§ 160.010–1, 160.051–5, 160.115–5, 160.132–5, 160.133–5, 160.135–5, 160.151–5, 160.156–5, 160.170–5, and 164.017–5. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in paragraph (b) in each of those sections.

Before publishing a binding rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VI. Regulatory Analyses

The Coast Guard developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below the Coast Guard summarizes these analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

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

A "Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis" is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. A summary of the analysis follows:

As previously discussed, the Coast Guard proposes to amend 46 CFR part 160 to harmonize its regulations with IMO standards governing certain types of lifesaving equipment. The Coast Guard also proposes to incorporate the use of independent laboratories for Coast Guard approval procedures for certain types of lifesaving equipment, including requiring the use of independent laboratories at certain stages of the approval procedures in lieu of Coast Guard personnel who currently perform these inspections and witness these tests.

We expect the proposed changes to harmonize existing regulations with international standards to have no additional costs for manufacturers of lifesaving equipment. In order for their lifesaving equipment to be used on vessels for international voyage from any nation that is a SOLAS signatory, equipment manufacturers must currently comply with the international standards for lifesaving equipment established by SOLAS. We expect the proposed rule reflects existing industry practices adopted in response to these international standards governing the performance of certain types of lifesaving equipment.

We expect the proposed changes to require the use of independent laboratories in lieu of Coast Guard personnel would result in additional costs for manufacturers of certain types of lifesaving equipment.

Currently, the Coast Guard does not charge for its inspections (although overseas manufacturing facilities reimburse the Coast Guard for travel and subsistence costs of Coast Guard inspectors). The use of independent laboratories required by this proposed rule would create a new cost for manufacturers of lifesaving equipment. However, the costs of inspections by independent laboratories would be partially offset by an overall reduction in the number of inspections made possible through the coordination of independent laboratories. Manufacturers would be able to schedule inspections and testing for independent laboratories acting on behalf of multiple nations, including the U.S., rather than requiring separate Coast Guard inspections and testing by Coast Guard inspectors. This coordinated use of independent laboratories would avoid multiple inspections and testing of the same equipment (*see* the "Independent Laboratories" section for more details) .

We estimate the annual costs to manufacturers for using independent laboratories are approximately $130,000 for U.S. firms and approximately $683,000 for foreign firms (undiscounted). Over a 10-year period of analysis, we estimate the total present value costs of the rulemaking are approximately $913,000 for U.S. firms and approximately $4.8 million for foreign firms, discounted at seven percent. We estimate the total present value cost of the rulemaking to be about $5.7 million over a 10-year period of analysis.

The other proposed changes, not resulting from harmonization with internal standards or use of independent laboratories, update Coast Guard regulations to reflect current practice or newer versions of existing standards and have minimal costs. These include an amendment specifying the attachment point for sea anchors to liferafts, and the addition of a new subpart in 46 CFR part 164 addressing resins used in the construction of lifeboats and rescue boats and incorporating the use of equivalent

international standards as an alternative to national consensus standards.

The benefits of the proposed rule include compliance with U.S. obligations as a SOLAS signatory and removing inconsistencies between international standards and the Coast Guard's current regulations. The proposed rule also provides possible savings for manufacturers from coordination efficiencies for inspections and increased efficiency for the Coast Guard from greater flexibility in assigning its human resources, particularly those stationed at overseas Coast Guard offices.

The "Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis" available on the docket provides additional detail on the costs and benefits of this rulemaking. The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of this rulemaking. Comments can be made as indicated in the **ADDRESSES** section.

B. Small Entities

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

A combined "Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis" discussing the impact of this proposed rule on small entities is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

We determined that six of the eight U.S. firms manufacturing lifesaving equipment are classified as small entities under the Small Business Administration size standards. We estimate the annual costs to use independent laboratories is less than 0.5 percent of revenue for five of the six small entities and less than 1.25 percent of revenue for one of the six small entities. However, these estimates do not include adjustments for manufacturer savings from the coordinated use of independent laboratories that would avoid multiple inspections and testing of the same equipment (*see* the "Independent Laboratories" section for more details).

Based on this information, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. George Grills, P.E., Commercial Regulation and Standard Directorate, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–5214), Coast Guard, telephone 202–372–1385, or e-mail address *George.G.Grills@uscg.mil.* 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.

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).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information collected under the proposed rule is addressed in the existing collection of information, OMB control number 1625–0035, title 46 Subchapter Q: Lifesaving, Electrical, and Engineering Equipment, Construction and Materials & Marine Sanitation Devices (33 CFR part 159), which was reviewed by OMB on May 27, 2009 and will expire after the 3-year approval period ending on May 31, 2012, unless renewed. The proposed rule would increase the total annual collection burden of the existing collection of information by 1.2 percent. The current authorized annual burden is 103,289 hours and the proposed rule would increase the annual burden by approximately 1,221 hours.

The increase in the annual burden is not considered material or substantive. To confirm this, the Coast Guard has submitted a change worksheet (OMB Form 83–C) to OIRA noting the change in the annual burden. The change worksheet is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility as indicated under **ADDRESSES**, by the date under **DATES**.

E. 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.

The U.S. Supreme Court has long recognized the field preemptive impact of the Federal regulatory regime for inspected vessels. *See, e.g., Kelly* v. *Washington ex rel Foss,* 302 U.S. 1 (1937) and the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke,* 529 U.S. 89, 113–116 (2000). Therefore the Coast Guard's view is that regulations issued under the authority of 46 U.S.C. 3306 in the areas of design, construction, alteration, repair, operation, superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, accommodations for passengers and crew, sailing school instructors, sailing school students, lifesaving equipment and its use, firefighting equipment, its use and precautionary measures to guard against fire, inspections and tests related to these areas and the use of vessel stores and other supplies of a dangerous nature have preemptive effect over State regulation in these fields, regardless of whether the Coast Guard has issued regulations on the subject or not, and regardless of the existence of conflict between the State and Coast Guard regulation.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, as these categories are within a field foreclosed from regulation by the States

(see *U.S.* v. *Locke,* above), the Coast Guard recognizes the key role State and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected State and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invite affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to the docket using one of the methods specified under **ADDRESSES**. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials that submit comments to this proposed rule, (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon, and (3) a statement of the extent to which the concerns of State and local officials have been met.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Coast Guard has 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.

L. International Trade Impacts

Under the Trade Agreement Act of 1979 (codified at 19 U.S.C. 2501 *et seq.*), agencies are prohibited from promulgating any standards or engaging in related activities that create unnecessary obstacles to foreign commerce. Because the proposed rule would have an effect on foreign firms, we have also examined the costs and regulatory action to determine if it would constitute an unnecessary obstacle to trade. Because the overall costs are minimal, the requirement for third-party inspections and testing is uniform across product classes, and the requirement for independent third-party testing applies to both domestic and overseas manufacturers, this rule does not constitute an obstacle to trade or a non-tariff barrier to trade.

M. 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 OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule uses the following voluntary consensus standards:

- ASTM A 36/A 36M–08 Standard Specification for Carbon Structural Steel;
- ASTM A 216/A 216M–08 Standard Specification for Steel Castings, Carbon, Suitable for Fusion Welding for High-Temperature Service;
- ASTM A 653/A 653M–08 Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process;
- ASTM B 127–05(2009) Standard Specification for Nickel-Copper Alloy (UNS N04400) Plate, Sheet, and Strip;
- ASTM B 209–07 Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate;
- ASTM D 543–06 Standard Test Method for Resistance of Plastics to Chemical Reagents;
- ASTM D 570–98(2005) Standard Test Method for Water Absorption of Plastics;
- ASTM D 638–08 Standard Test Method for Tensile Properties of Plastics;
- ASTM D 695–08 Standard Test Method for Compressive Properties of Rigid Plastics;
- ASTM D 790–07e1 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials;
- ASTM D 792–08 Standard Test Methods for Density and Specific Gravity (Relative Density) of Plastics by Displacement;
- ASTM D 1045–08 Standard Methods of Sampling and Testing Plasticizers used in Plastics;
- ASTM D 1824–95(2002) Standard Test Method for Apparent Viscosity of Plastisols and Organosols at Low Shear Rates;
- ASTM D 2471–99 Standard Test Method for Gel Time and Peak Exothermic Temperature of Reacting Thermosetting Resins;
- ASTM D 2583–07 Standard Test Method for Indentation Hardness of Rigid Plastics by Means of a Barcol Impressor;
- ASTM D 2584–08 Standard Test Method of Ignition Loss for Cured Reinforced Resins;
- ASTM D 4029–09 Standard Specification for Finished Woven Glass Fabrics;

• ASTM F 1014–02(2007) Standard Specification for Flashlights on Vessels;
• ASTM F 1166–07 Standard Practice for Human Engineering Design for Marine Systems, Equipment, and Facilities;
• ASTM G 154–06 Standard Practice for Operating Fluorescent Light Apparatus for UV Exposure of Nonmetallic Materials;
• International Life-Saving Appliance Code, (IMO Resolution MSC.48(66), as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85));
• IMO Resolution A.657(16) Instructions for Action in Survival Craft;
• IMO Resolution A.658(16) Use and Fitting of Retro-reflective Materials on Life-saving Appliances;
• IMO Resolution A.760(18) Symbols Related to Life-Saving Appliances and Arrangements;
• IMO Resolution MSC.81(70), Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85);
• MSC Circular 980, Standardized life-saving appliance evaluation and test report forms;
• MSC Circular 1006, Guidelines On Fire Test Procedures For Acceptance Of Fire-Retardant Materials For The Construction Of Lifeboats;
• MSC.1 Circular 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems;
• ISO 62:2008 Plastics—Determination of water absorption;
• ISO 175:1999 Plastics—Methods of test for the determination of the effects of immersion in liquid chemicals;
• ISO 14125:1998 Fibre-reinforced plastic composites—Determination of flexural properties;
• ISO 527–1:1993 Plastics—Determination of tensile properties;
• ISO 604:2002 Plastics—Determination of compressive properties;
• ISO 1172:1996 Textile-glass-reinforced plastics—Prepregs, moulding compounds and laminates—Determination of the textile-glass and mineral-filler content—Calcination methods;
• ISO 1183–1:2004 Plastics—Methods for determining the density of non-cellular plastics—Part 1: Immersion method, liquid pyknometer method and titration method;
• ISO 1675:1985 Plastics—Liquid resins—Determination of density by the pyknometer method;
• ISO 2039–1:2001 Determination of hardness—Part 1: Ball indentation method;
• ISO 2039–2:1987 Determination of hardness—Part 2: Rockwell hardness;
• ISO 2114:2000 Plastics (polyester resins) and paints and varnishes (binders)—Determination of partial acid value and total acid value;
• ISO 2535:2001 Plastics—Unsaturated-polyester resins—Measurement of gel time at ambient temperature;
• ISO 2555:1989 Plastics—Resins in the liquid state or as emulsions or dispersions—Determination of apparent viscosity by the Brookfield test method;
• ISO 15372:2000 Ships and marine technology—Inflatable rescue boats—Coated fabrics for inflatable chambers;
• ISO 15738:2002 Ships and marine technology—Gas inflation systems for inflatable life-saving appliances;
• ISO 17339:2002 Ships and marine technology—Sea anchors for survival craft and rescue boats;
• ISO 18813:2006 Ships and marine technology—Survival equipment for survival craft and rescue boats;
• SAE J1527–93, Marine Fuel Hoses;
• UL 1102, Standard for Nonintegral Marine Fuel Tanks; and
• UL 1185, Standard for Portable Marine Fuel Tanks.

The proposed sections that reference these standards and the locations where these standards are available are listed in 46 CFR 160.010–1, 160.115–5, 160.132–5, 160.133–5, 160.135–5, 160.151–5, 160.156–5, 160.170–5, and 164.017–5.

This proposed rule also uses technical standards other than voluntary consensus standards. The Coast Guard proposes to use the below-listed standards issued by the Department of Defense and the General Services Administration because the Coast Guard did not find voluntary consensus standards that fulfill the purpose of these standards as applicable to the proposed rule:

• A–A 55308 Cloth And Strip, Laminated Or Coated, Vinyl Nylon Or Polyester, High Strength, Flexible;
• Federal Standard 595C—Colors Used in Government Procurement;
• MIL–C–17415E—Cloth, Coated, and Webbing, Inflatable Boat and Miscellaneous Use;
• MIL–C–19663D: Cloth, Woven Roving, For Plastic Laminate, 4 AUG 1998;
• MIL–P–17549D(SH): Plastics Laminates, Fibrous Glass Reinforced, Marine, 31 AUG 1981;
• MIL–P–19644 C—Plastic Molding Material (Polystyrene Foam, Expanded Bead);
• MIL–P–21929 B—Plastic Material, Cellular Polyurethane, Foam-In-Place, Rigid (2 and 4 Pounds per Cubic Foot);
• MIL–P–40619 A—Plastic Material, Cellular, Polystyrene (For Buoyancy Applications);
• MIL–R–7575 C, Resin, Polyester, Low Pressure Laminating, 29 June 1966;
• MIL–R–21607E(SH), Resins, Polyester, Low Pressure Laminating, Fire-Retardant; 25 May 1990; and
• MIL–R–24719(SH), Resins, Vinyl Ester, Low Pressure Laminating, 4 May 1989.

If you disagree with our analysis of the voluntary consensus standards listed above or are aware of voluntary consensus standards that might apply but are not listed, please send a comment to the docket using one of the methods under **ADDRESSES**. In your comment, please explain why you disagree with our analysis and/or identify voluntary consensus standards the Coast Guard has not listed that might apply.

N. Environment

The Coast Guard has analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule involves requiring manufacturers of lifesaving equipment to use qualified independent laboratories and updating technical requirements for some lifesaving equipment. As such, it would be categorically excluded under Section 2.B.b, Figure 2.1 paragraph (34)(b) and (d), of the Instruction, which covers regulations concerning delegating authority, manning, documents, admeasurements, inspection, and equipping of vessels; and paragraph 6(a) of the National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions (67 FR 141, 48243 (July 23, 2002)), which covers regulations concerning vessel operation safety standards because this rule pertains to regulations concerning delegating authority and the inspection and equipping of vessels, as well as vessel operation safety standards, equipment approval, and equipment carriage requirements. The Coast Guard seeks any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 117

Marine safety, Passenger vessels.

46 CFR Part 133

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Incorporation by reference, Reporting and recordkeeping requirements.

46 CFR Part 164

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 180

Marine safety, Passenger vessels.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 108, 117, 133, 160, 164, 180, and 199 as follows:

PART 108—DESIGN AND EQUIPMENT

1. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 108.550(a) to read as follows:

§ 108.550 Survival craft launching and recovery arrangements: General.

(a)(1) Each launching appliance must be a davit approved under 46 CFR part 160, subpart 160.132 for use with the intended craft, with a winch approved under 46 CFR part 160, subpart 160.115 for use with the intended craft.

(2) Each launching appliance for a davit-launched liferaft must include an automatic disengaging apparatus approved under 46 CFR part 160, subpart 160.170 and be either—

(i) A launching appliance described in (a)(1) of this section; or

(ii) A launching appliance approved on or before (EFFECTIVE DATE OF FINAL RULE) under approval series 160.163.

* * * * *

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

3. The authority citation for part 117 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

4. In § 117.150, revise paragraph (a) and add paragraph (c) to read as follows:

§ 117.150 Survival craft embarkation arrangements.

(a) A launching appliance described in paragraph (c) of this section, or a marine evacuation system approved under approval series 160.175, must be provided for each inflatable liferaft and inflatable buoyant apparatus when either—

* * * * *

(c) Each launching appliance for a davit-launched liferaft must include an automatic disengaging apparatus approved under 46 CFR part 160, subpart 160.170 and be either—

(1) A davit approved under 46 CFR part 160, subpart 160.132 for use with a liferaft, with a winch approved under 46 CFR part 160, subpart 160.115 for use with a liferaft; or

(2) A launching appliance approved on or before (EFFECTIVE DATE OF FINAL RULE) under approval series 160.163.

PART 133—LIFESAVING SYSTEMS

5. The authority citation for part 133 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307; Department of Homeland Security Delegation No. 0170.1.

6. Revise § 133.150(b) to read as follows:

§ 133.150 Survival craft launching and recovery arrangements: General.

* * * * *

(b)(1) Each launching appliance must be a davit approved under 46 CFR part 160, subpart 160.132 for use with the intended craft, with a winch approved under 46 CFR part 160, subpart 160.115 for use with the intended craft.

(2) Each launching appliance for a davit-launched liferaft must include an automatic disengaging apparatus approved under 46 CFR part 160, subpart 160.170 and be either—

(i) A launching appliance described in (b)(1) of this section; or

(ii) A launching appliance approved on or before (EFFECTIVE DATE OF FINAL RULE) under approval series 160.163.

* * * * *

PART 160—LIFESAVING EQUIPMENT

7. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 160.010—Buoyant Apparatus for Merchant Vessels

8. Revise § 160.010–1 to read as follows:

§ 160.010–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST, SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 22200 Crystal Drive, 11th Floor, Arlington, VA 22202, 703–605–5400.

(1) Federal Standard 595C—Colors Used in Government Procurement, IBR approved for § 160.010–5 ("FED–STD–595C").

(2) [Reserved]

(c) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for § 160.010–3 ("IMO LSA Code").

(2) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for § 160.010–3 ("IMO Revised recommendation on testing").

(d) Military Specifications and Standards, Standardization Order Desk, Building 4D, 700 Robins Avenue,

Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/.*

(1) MIL–P–19644 C—Plastic Molding Material (Polystyrene Foam, Expanded Bead), IBR approved for § 160.010–5 ("MIL–P–19644 C").

(2) MIL–P–21929 B—Plastic Material, Cellular Polyurethane, Foam-In-Place, Rigid (2 and 4 Pounds per Cubic Foot), IBR approved for § 160.010–5 ("MIL–P–21929 B").

(3) MIL–P–40619 A—Plastic Material, Cellular, Polystyrene (For Buoyancy Applications), IBR approved for § 160.010–5 ("MIL–P–40619 A").

(4) MIL–R–21607E(SH), Resins, Polyester, Low Pressure Laminating, Fire-Retardant, 25 May 1990, IBR approved for § 160.010–5 ("MIL–R–21607E(SH)").

9. In § 160.010–2, revise the definition for "Commandant" to read as follows:

§ 160.010–2 Definitions.

* * * * *

Commandant means the Commandant (CG–5214), U.S. COAST GUARD, 2100 2ND ST, SW., STOP 7126, WASHINGTON, DC 20593–7126.

* * * * *

10. § In 160.010–3—

a. In paragraph (a)(1), remove the words "(SOLAS Chapter III, regulation 38, paragraph 1.5 (III/38.1.5))" and add, in their place, the words "(IMO LSA Code, Chapter IV/4.1.1.5 (incorporated by reference, see § 160.010–1))";

b. In paragraph (a)(2), remove the words "(Regulation III/38.2.1)" and add, in their place, the words "(IMO LSA Code, Chapter IV/4.1.2.1)";

c. In paragraph (a)(3), remove the words "(Regulation III/39.2.2)" and add, in their place, the words "(IMO LSA Code, Chapter IV/4.2.2.2)";

d. In paragraph (a)(4), remove the words "(Regulation III/39.5.1)" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.5.4";

e. In paragraph (a)(5), remove the words "(Regulation III/39.5.2)" and add, in their place, the words "(IMO LSA Code, Chapter IV/4.2.5.2)";

f. In paragraph (a)(9), remove the words "(Regulation III/39.4.1)" and add, in their place, the words "(IMO LSA Code, Chapter IV/4.2.4.1)";

g. In paragraph (a)(10), remove the words "(Regulation III/39.4.2)" and add, in their place, the words "(IMO LSA Code, Chapter IV/4.2.4.2)";

h. In paragraph (a)(11), remove the symbol "§ " and add, in its place, the words "46 CFR"; and remove the words "of this subchapter";

i. In paragraph (a)(12), in the introductory text after the word "Equipment", remove the words "(Regulation III/38.5.1)"; and in the last sentence in the introductory text, remove the words "Regulation III/38.5.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5";

j. In paragraph (a)(13), remove the words "(Regulations III/39.7.3.4, III/39.7.3.5, and III/39.8.6)"; after the words "requirements of § 160.151–33", add the words "as well as IMO LSA Code, Chapter IV/4.2.6.3 and 4.2.7.1.6"; and remove the words "regulation III/39.8.6" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.7.1.6";

k. In paragraph (a)(14), remove the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing (incorporated by reference, see § 160.010–1)";

l. In paragraphs (a)(15) and (a)(16), remove the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing";

m. In paragraph (e) introductory text, remove the words "under the IMO International Code of Safety for High-Speed Craft (HSC Code)"; and remove the words "Annex 10 to the HSC Code" and add, in their place, the words "Annex 11 to IMO Res. MSC.97(73)"; and

n. Add paragraph (e)(9) to read as follows:

§ 160.010–3 Inflatable buoyant apparatuses.

* * * * *

(e) * * *

(9) *Stability.* It must be fitted with stability pockets, in accordance with IMO LSA Code Chapter IV/4.2.5.4.

§ 160.010–4 [Amended]

11. In § 160.010–4—

a. In paragraph (g), remove the word "(1/4in.)" and add, in its place, the words "(1/4 in.)"; and

b. In paragraph (n), remove the words "sections 13 and 14 of the "Color Names Dictionary"" and add, in their place, the words "sections 13 and 14 of FED–STD–595C (incorporated by reference, see § 160.010–1)".

§ 160.010–5 [Amended]

12. In § 160.010–5—

a. In paragraph (b) introductory text, remove the text "(CG–521)" and add, in its place, the text "(CG–5214)";

b. In paragraph (b)(2), remove the text "MIL–P–19644" and add, in its place, the text "MIL–P–19644 C (incorporated by reference, see § 160.010–1)";

c. In paragraph (b)(3), remove the text "MIL–P–21929" and add, in its place, the text "MIL–P–21929 B (incorporated by reference, see § 160.010–1)";

d. In paragraph (b)(4), remove the text "MIL–P–40619" and add, in its place, the text "MIL–P–40619 A (incorporated by reference, see § 160.010–1)";

e. In paragraph (c)(1), remove the text "MIL–P–21607" and add, in its place, the text "MIL–P–21607E(SH) (incorporated by reference, see § 160.010–1)"; and remove the text "(G–MSE)" and add, in its place, the text "(CG–5214)"; and

f. In paragraphs (c)(2) and (c)(3), remove the text "(CG–521)" and add, in its place, the text "(CG–5214)".

§ 160.010–7 [Amended]

13. In § 160.010–7(a), remove the text "CG–512" and add, in its place, the text "CG–5214".

Subpart 160.015 [Removed and Reserved]

14. Remove and reserve subpart 160.015.

Subpart 160.032 [Removed and Reserved]

15. Remove and reserve subpart 160.032.

Subpart 160.033 [Removed and Reserved]

16. Remove and reserve subpart 160.033.

Subpart 160.035 [Removed and Reserved]

17. Remove and reserve subpart 160.035.

Subpart 160.051—Inflatable Liferafts for Domestic Service

18. Revise § 160.051–1 to read as follows:

§ 160.051–1 Scope.

(a) This subpart prescribes requirements for approval by the Coast Guard of A, B, and Coastal Service inflatable liferafts for use only in domestic service. These liferafts must comply with all of the requirements for SOLAS A and SOLAS B liferafts in subpart 160.151 except as specified in this subpart.

(b) This subpart does not apply to any A, B, and Coastal Service inflatable liferaft for use only in domestic service that has been approved by the Coast Guard before (EFFECTIVE DATE OF FINAL RULE), so long as the liferaft satisfies the annual servicing requirements set forth in 46 CFR 160.151–57.

19. In § 160.051–3, add the definition for "Commandant", in alphabetical order, as follows:

§ 160.051–3 Definitions.

* * * * *

Commandant means the Commandant (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–1726.

20. Redesignate §§ 160.051–5, 160.051–7, and 160.051–9 as §§ 160.051–7, 160.051–9, and 160.051–11, respectively.

21. Add new § 160.051–5 to read as follows:

§ 160.051–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) International Maritime Organization (IMO) Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for §§ 160.051–7 and 160.051–9 ("IMO LSA Code").

(2) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for §§ 160.051–7, 160.051–9, and 160.051–11 ("IMO Revised recommendation on testing").

§ 160.051–7 [Amended]

22. In newly redesignated § 160.051–7—

a. In paragraph (a), remove the words "Regulation III/38.1.5" and add, in their place, the words "IMO LSA Code Chapter IV/4.1.1.5, (incorporated by reference, see § 160.051–5)";

b. In paragraph (b), remove the first instance of the words "Regulation III/38.1.5.5" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.1.5.5"; and after the words "the viewing port", remove the words "described in Regulation III/38.1.5.5";

c. In paragraph (c), remove the first instance of the words "Regulation III/38.1.5.6" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.1.5.6"; and after the words "means of rainwater collection", remove the words "described in Regulation III/38.1.5.6";

d. In paragraph (d), remove the words "Regulation III/38.2.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.2.1";

e. In paragraph (e), remove the words "Regulation III/39.2.2" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.2.2";

f. In paragraph (f), remove the words "Regulation III/39.4.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.4.1";

g. In paragraph (g), remove the words "Regulation III/39.5.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.5";

h. In paragraph (h), remove the first instance of the words "Regulation III/39.6.3" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.3.4"; and after the words "controlled interior lamp", remove the words "described in Regulation III/39.6.3";

i. In paragraph (i), remove the words "Regulations III/39.7.3.4 and III/39.7.3.5" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.3.6";

j. In paragraph (j), remove the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing (incorporated by reference, see § 160.051–5)"; and

k. In paragraphs (k) and (l), remove the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing".

§ 160.051–9 [Amended]

23. In newly redesignated § 160.051–9—

a. In paragraph (a), remove the words "Regulation III/38.2.1" and add, in their place, the words "IMO LSA Code Chapter IV/4.1.2.1"; and

b. In paragraph (b), remove the words "Regulations III/39.7.3.4 and III/39.7.3.5" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.6.3".

§ 160.051–11 [Amended]

24. In newly redesignated § 160.051–11, in paragraph (f), remove the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing (incorporated by reference, see § 160.051–5)".

25. Add subpart 160.115 to read as follows:

Subpart 160.115—Launching Appliances—Winches

Sec.
160.115–1 Scope.
160.115–3 Definitions.
160.115–5 Incorporation by reference.
160.115–7 Design, construction, and performance of winches.
160.115–9 Preapproval review.
160.115–11 [Reserved]
160.115–13 Approval inspections and tests for prototype winches.
160.115–15 Production inspections, tests, quality control, and conformance of winches.
160.115–17 Marking and labeling.
160.115–19 Operating instructions and information for the ship's training manual.
160.115–21 Operation and maintenance instructions.
160.115–23 Procedure for approval of design or material change.

Subpart 160.115—Launching Appliances—Winches

§ 160.115–1 Scope.

This subpart prescribes standards, tests, and procedures for seeking Coast Guard approval of a winch used in conjunction with a davit approved under 46 CFR part 160, subpart 160.132 for lifeboats approved under 46 CFR part 160, subpart 160.135, liferafts approved under 46 CFR part 160, subparts 160.051 or 160.151, and rescue boats approved under 46 CFR part 160, subparts 160.056 or 160.156.

§ 160.115–3 Definitions.

In addition to the definitions in the IMO LSA Code (incorporated by reference, see § 160.115–5), in this subpart, the term:

Commandant means the Commandant (CG–5214), U.S. COAST GUARD, 2100 2ND ST. SW., STOP 7126, WASHINGTON, DC 20593–7126.

Independent laboratory has the same meaning as 46 CFR 159.001–3. A list of accepted independent laboratories is available from the Commandant and online at *http://cgmix.uscg.mil.*

Officer In Charge, Marine Inspection (OCMI) means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations. The "cognizant OCMI" is the OCMI who has immediate

jurisdiction over a vessel for the purpose of performing the duties previously described.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

§ 160.115–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST. SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) International Maritime Organization (IMO) Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution A.760(18), Symbols Related to Life-Saving Appliances and Arrangements, IBR approved for § 160.115–19 ("IMO Res. A.760(18)").

(2) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for § 160.115–7 ("IMO LSA Code").

(3) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for §§ 160.115–7, 160.115–13, and 160.115–15 ("IMO Revised recommendation on testing").

(4) MSC Circular 980, Standardized life-saving appliance evaluation and test report forms, IBR approved for § 160.115–13 ("IMO MSC Circ. 980").

(5) MSC.1 Circular 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems, IBR approved for § 160.115–21 ("IMO MSC.1 Circ. 1205").

§ 160.115–7 Design, construction, and performance of winches.

(a) To seek Coast Guard approval of a winch, a manufacturer must comply with, and each winch must meet, the requirements of the following—

(1) IMO LSA Code, Chapter I/1.2.2 and Chapter VI/6.1.1 and 6.1.2 (incorporated by reference, see § 160.115–5) applicable to the design and intended service of the winch;

(2) IMO Revised recommendation on testing, Part 1/8.1 (incorporated by reference, see § 160.115–5) applicable to the winch;

(3) 46 CFR part 159; and

(4) This subpart.

(b) Each winch must meet each of the following requirements:

(1) *Materials.* (i) All gears must be machine cut and made of steel, bronze, or other suitable materials properly keyed to shafts. The use of cast iron is not permitted for these parts.

(ii) Metals in contact with each other must be either galvanically compatible or insulated with suitable non-porous materials. Provisions must also be made to prevent loosening or tightening resulting from differences of thermal expansion, freezing, buckling of parts, galvanic corrosion, or other incompatibilities.

(iii) Screws, nuts, bolts, pins, keys, and other similar hardware, securing moving parts must be fitted with suitable lock washers, cotter pins, or locks to prevent them from coming adrift.

(2) *Bearings and gears.* (i) Positive means of lubrication must be provided for all bearings.

(ii) When worm gears are used, the worm wheel must operate in an oil bath. Means to easily check the oil level in the gear case must be provided.

(iii) The manufacturer must furnish a lubrication chart and a plate attached to the winch indicating the lubricant recommended for extremes in temperature.

(3) *Guards.* All moving parts must have suitable guards.

(4) *Welding.* Welding must be performed by welders certified by the Commandant, American Bureau of Shipping, U.S. Navy, or an independent laboratory accepted by the Commandant. Only electrodes intended for use with the material being welded may be used. All welds must be checked using appropriate non-destructive tests.

(5) *Winch drums.* (i) A winch must have grooved drums unless otherwise approved by the Commandant.

(ii) The diameter of the drums must be at least 16 times the diameter of the falls.

(iii) Drums must be so arranged as to keep the falls separate, and to pay out the falls at the same rate. Clutches between drums are not permitted unless bolted locking devices are used.

(6) *Winch motors.* For a winch powered by electric or hydraulic motors, or portable power units such as air or electric drills—

(i) Positive means must be provided for controlling the power to the winch, arranged so that the operator must hold the master switch or controller in the "on" or "hoist" position for hoisting, and when released, will immediately shut off the power;

(ii) A clutch must be fitted to disengage the power installation during the lowering operation;

(iii) A means must be provided to disconnect power to the winch before a hand crank can be engaged with the winch operating shaft, and this interruption of power must be maintained while the hand crank is so engaged;

(iv) The air or electric power outlet for a portable power unit must be located adjacent to the winch where the unit is to be coupled, and the outlet must be interconnected with, and protected by, the same system of safety devices as required for a winch with built-in-motors;

(v) A main line emergency disconnect switch, the opening of which disconnects all electrical potential to the winch, must be provided. This switch must be located in a position accessible to the person in charge of the boat stowage and must be in a position from which the movement of both davit arms can be observed as they approach the final stowed position;

(vi) Limit switches, one for each davit arm, must be provided to limit the travel of the davit arms as they approach the final stowed position. These switches must—

(A) Be so arranged that the opening of either switch will disconnect all electrical potential of the circuit in which the switches are connected;

(B) Be arranged to stop the travel of the davit arms not less than 12 inches from their final stowed position; and

(C) Remain open until the davit arms move outboard beyond the tripping position of the switches;

(vii) Motor clutches, when used, must be of either frictional or positive engaging type. When one motor is used for two winches, the clutch must be so arranged that only one winch may be engaged at any one time. The clutch operating lever must be capable of remaining in any position when subject to vibration and must be so arranged that when in neutral position both lifeboats may be lowered simultaneously;

(viii) Motors, switches, controls, and cables must be waterproof if installed on an open deck. Controls may be of the

drip-proof type if installed in a deck house or under deck;

(ix) Hydraulic systems must be in accordance with 46 CFR part 58, subpart 58.30; and

(x) Electrical installations must comply with 46 CFR 111.01–9, 111.01–11, 111.01–19, 111.25, 111.55, 111.70, and 111.95.

(7) *Quick return.* For a winch used to launch an inflatable liferaft means must be provided for rapidly retrieving the falls by hand power.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

§ 160.115–9 Preapproval review.

(a) Except as provided in paragraph (c) of this section, the Commandant must conduct the preapproval review required by this section, in accordance with 46 CFR 159.005–5.

(b) *Manufacturer requirements.* To seek Coast Guard approval of a winch, the manufacturer must submit an application to the Commandant meeting the requirements of 46 CFR 159.005–5 for preapproval review. To meet the requirements of 46 CFR 159.005–5(a)(2), the manufacturer must submit in triplicate—

(1) A list of drawings, specifications, manuals, and any other documentation submitted, with each document identified by number, title, revision number, and issue date;

(2) General arrangement and assembly drawings, including principal dimensions;

(3) Stress calculations for all load carrying parts;

(4) An operation, maintenance, and training manual as described in §§ 160.115–19 and 160.115–21 of this subpart;

(5) A description of the quality control procedures and recordkeeping that will apply to the production of the winch, which must include, but is not limited to—

(i) The system for checking material certifications received from suppliers;

(ii) The method for controlling the inventory of materials;

(iii) The method for checking quality of fabrication and joints, including welding inspection procedures; and

(iv) The inspection checklists used during various stages of fabrication to assure that the approved winch complies with the approved plans and the requirements of this subpart;

(6) Any other drawing(s) necessary to show that the winch complies with the requirements of this subpart;

(7) The location or address of all manufacturing sites, including the name and address of any subcontractors, where the winch will be constructed; and

(8) The name of the independent laboratory that will perform the duties prescribed in § 160.115–15 of this subpart.

(c) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may conduct preapproval review required by this section, so long as the preapproval review is conducted in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(d) *Plan quality.* All plans and specifications submitted to the Commandant under this section must—

(1) Be provided in English, including all notes, inscriptions, and designations for configuration control;

(2) Address each of the applicable items in paragraph (b) of this section in sufficient detail to show that the winch meets the construction requirements of this subpart;

(3) Accurately depict the proposed winch;

(4) Be internally consistent;

(5) Be legible; and

(6) If reviewed by an independent laboratory under paragraph (c) of this section, include the independent laboratory's attestation that the plans meet the quality requirements of this section.

(e) *Alternatives.* Alternatives in materials, parts, or construction, and each item replaced by an alternative, must be clearly indicated as such in the plans and specifications submitted to the Commandant under this section.

(f) *Coast Guard review.* If the plans or specifications do not comply with the requirements of this section, Coast Guard review may be suspended, and the applicant notified accordingly.

§ 160.115–11 [Reserved]

§ 160.115–13 Approval inspections and tests for prototype winches.

(a) If the manufacturer is notified that the information submitted in accordance with § 160.115–9 of this subpart is satisfactory to the Commandant, the manufacturer may proceed with fabrication of the prototype winch and the approval inspections and tests required under this section.

(b) Except as provided in paragraph (f) of this section, the Coast Guard must conduct the approval inspections and witness the approval tests required under this section.

(c) *Manufacturer requirements.* To proceed with approval inspections and tests required by this section, the manufacturer must—

(1) Notify the Commandant and cognizant Officer in Charge, Marine Inspection (OCMI) of where the approval inspections and tests required under this section will take place, and such notifications must be in sufficient time to allow making travel arrangements;

(2) Arrange a testing schedule that allows for a Coast Guard inspector to travel to the site where the testing is to be performed;

(3) Admit the Coast Guard inspector to any place where work or testing is performed on winches or their component parts and materials for the purpose of—

(i) Conducting inspections as necessary to determine that the prototype—

(A) Conforms with the plans reviewed under § 160.115–9 of this subpart;

(B) Is constructed by the methods and with the materials specified in the plans reviewed under § 160.115–9 of this subpart; and

(C) When welding is part of the construction process, is constructed by the welding procedure and materials as per the plans reviewed under § 160.115–9 of this subpart and the welders are appropriately qualified;

(ii) Assuring that the quality-assurance program of the manufacturer is satisfactory;

(iii) Witnessing tests; and

(iv) Taking samples of parts or materials for additional inspections or tests; and

(4) Make available to the Coast Guard inspector the affidavits or invoices from the suppliers of all essential materials used in the production of winches, together with records identifying the lot or serial numbers of the winches in which such materials were used.

(d) *Tests*—(1) *IMO Revised recommendation on testing.* Each prototype winch of each design must pass each of the tests described in IMO Revised recommendation on testing, Part 1, paragraph 8.1 (incorporated by reference, see § 160.115–5) applicable to winches.

(2) *Visual inspection.* Each winch must be visually inspected to confirm—

(i) Compliance with this subpart;

(ii) Conformance with the examined plans; and

(iii) Ease of operation and maintenance.

(3) *Hydraulic controls.* If the winch motor includes a fluid power and control system, a test of the hydraulic controls must be conducted in accordance with 46 CFR 58.30–35.

(e) *Test waiver.* The Commandant may waive certain tests for a winch

similar in construction to a winch that has successfully completed the tests.

(f) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may perform approval inspections and witness approval tests required by this section so long as the inspections and tests are performed and witnessed in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(g) After completion of approval inspections and tests required by this section, the manufacturer must comply with the requirements of 46 CFR 159.005–9(a)(5) by preparing and submitting to the Commandant for review—

(1) The prototype approval test report containing the same information recommended by IMO MSC Circ. 980 (incorporated by reference, see § 160.115–5). The report must include a signed statement by the Coast Guard inspector (or independent laboratory as permitted under paragraph (f) of this section) who witnessed the testing, indicating that the report accurately describes the testing and its results; and

(2) The final version of the plans required under § 160.115–9 of this subpart in triplicate.

(h) The Commandant will review the report and plans submitted under paragraph (g) of this section, and if satisfactory to the Commandant, will approve the plans under 46 CFR 159.005–13.

§ 160.115–15 Production inspections, tests, quality control, and conformance of winches.

(a) Unless the Commandant directs otherwise, an independent laboratory must conduct or witness inspections, tests, and oversight required by this section. Production inspections and tests of a winch must be carried out in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007 and in this section, unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(b) *Manufacturer's responsibility.* The manufacturer must—

(1) Institute a quality control procedure to ensure that all production winches are produced to the same standard, and in the same manner, as the prototype winch approved by the Commandant. The manufacturer's quality control personnel must not work directly under the department or person responsible for either production or sales;

(2) Schedule and coordinate with the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) to ensure that all tests are performed as described in this section;

(3) Submit to the Commandant a yearly report that contains the following—

(i) Serial number and date of final assembly of each winch constructed;

(ii) The name of the representative of the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section); and

(iii) Name of the vessel and company receiving the winch, if known;

(4) Ensure that the arrangement and materials entering into the construction of the winch are in accordance with plans approved under § 160.115–13(h) of this subpart;

(5) Allow an independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) access to any place where materials are stored for the winch, work or testing is performed on winches or their component parts and materials, or records are retained to meet the requirements of paragraph (c) of this section, below, for the purpose of—

(i) Assuring that the quality control program of the manufacturer is satisfactory;

(ii) Witnessing tests; or

(iii) Taking samples of parts or materials for additional inspections or tests; and

(6) Ensure that the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) conducts the inspections and witnesses the tests required by paragraph (e) of this section, and further conducts a visual inspection to verify that the winches are being made in accordance with the plans approved under § 160.115–13(h) of this subpart and the requirements of this subpart.

(c) *Recordkeeping.* The manufacturer must maintain records in accordance with 46 CFR 159.007–13. The manufacturer must keep records of all items listed in this section for at least 5 years from the date of termination of approval of each winch. The records must include—

(1) A copy of this subpart, other CFR sections referenced in this subpart, and each document listed in § 160.115–5 of this subpart;

(2) A copy of the approved plans, documentation, and certifications;

(3) A current certificate of approval for each approved winch;

(4) Affidavits, certificates, or invoices from the suppliers identifying all essential materials used in the production of approved winches, together with records identifying the serial numbers of the winches in which such materials were used;

(5) Records of all structural welding and name of operator(s);

(6) Records of welder certificates, training, and qualifications;

(7) Date and results of calibration of test equipment and the name and address of the company or agency that performed the calibration;

(8) The serial number of each production winch, along with records of its inspections and tests carried out under this section; and

(9) The original purchaser of each winch and the vessel on which it was installed, if known.

(d) *Independent laboratory responsibility.* The independent laboratory must perform or witness the inspections and tests under this section for each Coast Guard-approved winch to be installed on a U.S. flag vessel. If the manufacturer also produces winches for approval by other maritime safety administrations, the inspections may be coordinated with inspection visits for those administrations.

(e) *Production inspections and tests.*

(1) Each approved winch must be inspected and tested in accordance with the procedures in 46 CFR part 159, subpart 159.007 and the brake test described in IMO Revised recommendation on testing, Part 2, paragraph 6.1.1 (incorporated by reference, see § 160.115–5).

(2) The lowering tests described in IMO Revised recommendation on testing, Part 2, paragraph 6.1 may be performed if the installation height is known. If these tests are performed, the results must be in accordance with 46 CFR 199.153(h) through (j).

§ 160.115–17 Marking and labeling.

(a) Each winch must be marked with a plate or label permanently affixed in a conspicuous place readily accessible for inspection and sufficiently durable to withstand continuous exposure to environmental conditions at sea for the life of the winch.

(b) The plate or label must be in English, but may also be in other languages.

(c) The plate or label must contain the—

(1) Name and address of the manufacturer;

(2) Manufacturer's model identification;

(3) Name of the independent laboratory that witnessed the prototype or production tests;

(4) Serial number of the winch;

(5) U.S. Coast Guard approval number;

(6) Month and year of manufacture;

(7) Safe working load of the winch; and

(8) Word "SOLAS".

§ 160.115–19 Operating instructions and information for the ship's training manual.

(a) Each winch must have instructions and information for the ship's training manual that use the symbols from IMO Res. A.760(18) (incorporated by reference, see § 160.115–5) to describe the location and operation of the winch.

(b) The instructions and information required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their complete launching systems.

(c) The winch manufacturer must make operating instructions and information required by paragraph (a) of this section available in English to the purchaser of a winch approved by the Coast Guard.

§ 160.115–21 Operation and maintenance instructions.

(a) Each winch must have operation and maintenance instructions that—

(1) Follows the general format and content specified in IMO MSC.1 Circ. 1205 (incorporated by reference, see § 160.115–5); and

(2) Includes a checklist for use in monthly, external visual inspections of the winch.

(b) The winch manufacturer must make the manual required by paragraph (a) of this section available in English to the purchaser of a winch approved by the Coast Guard.

(c) The operation and maintenance instructions required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their complete launching systems.

§ 160.115–23 Procedure for approval of design or material change.

(a) Each change in design, material, or construction from the plans approved under 46 CFR 159.005–13 and § 160.115–13(h) of this subpart must be approved by the Commandant before being used in any production winch. The manufacturer must submit any such change following the procedures in § 160.115–9 of this subpart, but documentation on items that are unchanged from the plans approved under 46 CFR 159.005–13 and § 160.115–13(h) of this subpart need not be resubmitted.

(b) Unless determined by the Commandant to be unnecessary, a prototype winch with each change described in paragraph (a) of this section must be made and tested according to the procedures for new approvals in §§ 160.115–9 through 160.115–13 of this subpart.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

26. Add subpart 160.132 to read as follows:

Subpart 160.132—Launching Appliances—Davits

Sec.

160.132–1 Scope.
160.132–3 Definitions.
160.132–5 Incorporation by reference.
160.132–7 Design, construction, and performance of davits.
160.132–9 Preapproval review.
160.132–11 [Reserved]
160.132–13 Approval inspections and tests for prototype davits.
160.132–15 Production inspections, tests, quality control, and conformance of davits.
160.132–17 Marking and labeling.
160.132–19 Operating instructions and information for the ship's training manual.
160.132–21 Operation and maintenance instructions.
160.132–23 Procedure for approval of design or material change.

Subpart 160.132—Launching Appliances—Davits

§ 160.132–1 Scope.

This subpart prescribes standards, tests, and procedures for seeking Coast Guard approval of a davit used in conjunction with a winch approved under 46 CFR part 160, subpart 160.115 for lifeboats approved under 46 CFR part 160, subpart 160.135, liferafts approved under 46 CFR part 160, subparts 160.051 or 160.151, and rescue boats approved under 46 CFR part 160, subparts 160.056 or 160.156.

§ 160.132–3 Definitions.

In addition to the definitions in the IMO LSA Code (incorporated by reference, see § 160.132–5), in this subpart, the term:

Commandant means the Commandant (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–7126.

Independent laboratory has the same meaning as 46 CFR 169.001–3. A list of accepted independent laboratories is available from the Commandant and online at *http://cgmix.uscg.mil.*

Officer In Charge, Marine Inspection (OCMI) means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations. The "cognizant OCMI" is the OCMI who has immediate jurisdiction over a vessel for the purpose of performing the duties previously described.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

§ 160.132–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959.

(1) ASTM A 36/A 36M–08 Standard Specification for Carbon Structural Steel, IBR approved for § 160.132–7 ("ASTM A 36").

(2) ASTM A 216/A 216M–08 Standard Specification for Steel Castings, Carbon, Suitable for Fusion Welding for High-Temperature Service, IBR approved for § 160.132–7 ("ASTM A 216").

(c) International Maritime Organization (IMO) Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution A.760(18), Symbols Related to Life-Saving Appliances and Arrangements, IBR approved for § 160.132–19 ("IMO Res. A.760(18)").

(2) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for §§ 160.132–7, 160.132–13, and 160.132–

15 ("IMO revised recommendation on testing").

(3) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for § 160.132–7 ("IMO LSA Code").

(4) MSC Circular 980, Standardized life-saving appliance evaluation and test forms, IBR approved for § 160.132–13 ("IMO MSC Circ. 980").

(5) MSC.1 Circular 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems, IBR approved for § 160.132–21 ("IMO MSC.1 Circ. 1205").

§ 160.132–7 Design, construction, and performance of davits.

(a) To seek Coast Guard approval of a davit, a manufacturer must comply with, and each davit must meet, the requirements of following—

(1) IMO LSA Code Chapter I/1.2.2 and Chapter VI/6.1.1 through 6.1.5 (incorporated by reference, see § 160.132–5) applicable to the design and intended service of the davit;

(2) IMO Revised recommendation on testing, Part 1/8.1 (incorporated by reference, see § 160.132–5) applicable to the design and intended service of the davit;

(3) 46 CFR part 159; and

(4) This subpart.

(b) Each davit must meet the following requirements—

(1) *Materials.* Each major structural component of each davit must be constructed of steel. Other materials may be used if accepted by the Commandant as equivalent or superior—

(i) Structural steel made by the open-hearth or electric furnace process must be in accordance with ASTM A 36 (incorporated by reference, see § 160.132–5);

(ii) Steel castings not intended for fusion welding must be in accordance with ASTM A 36, Grades U–60–30, 60–30, 65–30, 65–35, and 70–36;

(iii) Steel castings intended to be fabricated by fusion welding must be in accordance with ASTM A 216 (incorporated by reference, see § 160.132–5), Grades WCA and WCB;

(iv) Cast iron must not be used in the construction of a davit; and

(v) Metals in contact with each other must be either galvanically compatible or insulated with suitable non-porous materials. Provisions must also be made to prevent loosening or tightening resulting from differences of thermal expansion, freezing, buckling of parts, galvanic corrosion, or other incompatibilities;

(2) *Bearings.* (i) Bearings must be of non-ferrous metal, or must be of the roller or ball-bearing type;

(ii) Positive means of lubrication must be provided; and

(iii) The manufacturer must furnish a lubrication chart for each davit together with a plate attached to the davit indicating the lubricants recommended for extremes in temperature;

(3) *Guards.* All moving parts must have guards;

(4) *Welding.* Welding must be performed by welders certified by the Commandant, American Bureau of Shipping, U.S. Navy, or an independent laboratory accepted by the Commandant. Only electrodes intended for use with the material being welded may be used. All welds must be checked using appropriate non-destructive tests; and

(5) *Hydraulic systems,* if installed, must be in accordance with 46 CFR part 58, subpart 58.30.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

§ 160.132–9 Preapproval review.

(a) Except as provided in paragraph (c) of this section, the Commandant must conduct the preapproval review required by this section, in accordance with 46 CFR 159.005–5.

(b) *Manufacturer requirements.* To seek Coast Guard approval of a davit, the manufacturer must submit an application to the Commandant meeting the requirements of 46 CFR 159.005–5 for preapproval review. To meet the requirements of 46 CFR 159.005–5(a)(2), the manufacturer must submit in triplicate—

(1) A list of drawings, specifications, manuals, and any other documentation submitted, with each document identified by number, title, revision issue, and date;

(2) General arrangement and assembly drawings, including principal dimensions;

(3) Stress calculations for all load carrying parts;

(4) An operation, maintenance, and training manual as described in §§ 160.132–19 and 160.132–21 of this subpart;

(5) A description of the quality control procedures and recordkeeping that will apply to the production of the davit, which must include, but is not limited to—

(i) The system for checking material certifications received from suppliers;

(ii) The method for controlling the inventory of materials;

(iii) The method for checking quality of fabrication and joints, including welding inspection procedures; and

(iv) The inspection checklists used during various stages of fabrication to assure that the approved release mechanism complies with the approved plans and the requirements of this subpart;

(6) Any other drawing(s) necessary to show that the davit complies with the requirements of this subpart;

(7) The location or address of all manufacturing sites, including the name and address of any subcontractors, where the davit will be constructed; and

(8) The name of the independent laboratory that will perform the duties prescribed in § 160.132–15 of this subpart.

(c) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may conduct preapproval review required by this section, so long as the preapproval review is conducted in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR subpart 159.010.

(d) *Plan quality.* All plans and specifications submitted to the Commandant under this section must—

(1) Be provided in English, including all notes, inscriptions, and designations for configuration control;

(2) Address each of the applicable items in paragraph (b) of this section in sufficient detail to show that the davit meets the construction requirements of this subpart;

(3) Accurately depict the proposed davit;

(4) Be internally consistent;

(5) Be legible; and

(6) If reviewed by an independent laboratory under paragraph (c) of this section, include the independent laboratory's attestation that the plans meet the quality requirements of this section.

(e) *Alternatives.* Alternatives in materials, parts, or construction, and each item replaced by an alternative, must be clearly indicated as such in the plans and specifications submitted to the Commandant under this section.

(f) *Coast Guard review.* If the plans or specifications do not comply with the requirements of this section, Coast Guard review may be suspended, and the applicant notified accordingly.

§ 160.132–11 [Reserved]

§ 160.132–13 Approval inspections and tests for prototype davits.

(a) If the manufacturer is notified that the information submitted in accordance with § 160.132–9 of this subpart is satisfactory to the Commandant, the manufacturer may

proceed with fabrication of the prototype davit, and the approval inspections and tests required under this section.

(b) Except as provided in paragraph (f) of this section, the Coast Guard must conduct the approval inspections and witness the approval tests required under this section.

(c) *Manufacturer requirements.* To proceed with approval inspections and tests required by this section, the manufacturer must—

(1) Notify the Commandant and cognizant Officer in Charge, Marine Inspection (OCMI) of where the approval inspections and tests required under this section will take place, and such notifications must be in sufficient time to allow making travel arrangements;

(2) Arrange a testing schedule with the cognizant OCMI that allows for a Coast Guard inspector to travel to the site where the testing is to be performed;

(3) Admit the Coast Guard inspector to any place where work or testing is performed on davits or their component parts and materials for the purpose of—

(i) Conducting inspections as necessary to determine that the prototype—

(A) Conforms with the plans reviewed under § 160.132–9 of this subpart;

(B) Is constructed by the methods and with the materials specified in the plans reviewed under § 160.132–9 of this subpart; and

(C) When welding is part of the construction process, is constructed by the welding procedure and materials as per the plans reviewed under § 160.132–9 of this subpart and the welders are appropriately qualified;

(ii) Assuring that the quality-assurance program of the manufacturer is satisfactory;

(iii) Witnessing tests; and

(iv) Taking samples of parts or materials for additional inspections or tests; and

(4) Make available to the Coast Guard inspector the affidavits or invoices from the suppliers of all essential materials used in the production of davits, together with records identifying the lot or serial numbers of the davits in which such materials were used.

(d) *Tests*—(1) *IMO Revised recommendation on testing.* Each prototype davit of each design must pass each of the tests described in IMO Revised recommendation on testing, Part 1, paragraph 8.1 (incorporated by reference, see § 160.132–5) applicable to the design and service of the davit.

(2) *Visual inspection.* Each davit must be visually inspected to confirm—

(i) Compliance with this subpart;

(ii) Conformance with the examined plans; and

(iii) Ease of operation and maintenance.

(3) *Hydraulic controls.* If the davit design includes a fluid power and control system, a test of the hydraulic controls must be conducted in accordance with 46 CFR 58.30–35.

(e) *Test waiver.* The Commandant may waive certain tests for a davit similar in construction to a davit that has successfully completed the tests.

(f) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may perform approval inspections and witness approval tests required by this section so long as the inspections and tests are performed and witnessed in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(g) After completion of approval inspections and tests required by this section, the manufacturer must comply with the requirements of 46 CFR 159.005–9(a)(5) by preparing and submitting to the Commandant for review—

(1) The prototype approval test report containing the same information recommended by IMO MSC Circ. 980 (incorporated by reference, see § 160.132–5). The report must include a signed statement by the Coast Guard inspector (or independent laboratory as permitted by paragraph (f) of this section) who witnessed the testing, indicating that the report accurately describes the testing and its results; and

(2) The final version of the plans required under § 160.132–9 of this subpart in triplicate.

(h) The Commandant will review the report and plans submitted under paragraph (g) of this section, and if satisfactory to the Commandant, will approve the plans under 46 CFR 159.005–13.

§ 160.132–15 Production inspections, tests, quality control, and conformance of davits.

(a) Unless the Commandant directs otherwise, an independent laboratory must conduct or witness inspections, tests, and oversight required by this section. Production inspections and tests of davits must be carried out in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007 and in this section, unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(b) *Manufacturer's responsibility.* The manufacturer must—

(1) Institute a quality control procedure to ensure that all production davits are produced to the same standard, and in the same manner, as the prototype davit approved by the Commandant. The manufacturer's quality control personnel must not work directly under the department or person responsible for either production or sales;

(2) Schedule and coordinate with the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section), to ensure that all tests are performed as described in this section;

(3) Submit to the Commandant a yearly report that contains the following—

(i) Serial number and date of final assembly of each davit constructed;

(ii) The name of the representative of the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section); and

(iii) Name of the vessel and company receiving the davit, if known;

(4) Ensure that the arrangement and materials entering into the construction of the davit are in accordance with plans approved under § 160.132–13(h) of this subpart;

(5) Allow an independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) access to any place where materials are stored for the davit, work or testing is performed on davits or their component parts and materials, or records are retained to meet the requirements of paragraph (c) of this section, below, for the purpose of—

(i) Assuring that the quality control program of the manufacturer is satisfactory;

(ii) Witnessing tests; or

(iii) Taking samples of parts or materials for additional inspections or tests; and

(6) Ensure that the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) conducts the inspections and witnesses the tests required by paragraph (e) of this section, and further conducts a visual inspection to verify that the davits are being made in accordance with the plans approved under § 160.132–13(h) of this subpart and the requirements of this subpart.

(c) *Recordkeeping.* The manufacturer must maintain records in accordance with 46 CFR 159.007–13. The manufacturer must keep records of all

items listed in this section for at least 5 years from the date of termination of approval of each davit. The records must include—

(1) A copy of this subpart, other CFR sections referenced in this subpart, and each document listed in § 160.132–5 of this subpart;

(2) A copy of the approved plans, documentation, and certifications;

(3) A current certificate of approval for each approved davit;

(4) Affidavits, certificates, or invoices from the suppliers identifying all essential materials used in the production of approved davits, together with records identifying the serial numbers of davits in which such materials were used;

(5) Records of all structural welding and name of operator(s);

(6) Records of welder certificates, training, and qualifications;

(7) Date and results of calibration of test equipment and the name and address of the company or agency that performed the calibration;

(8) The serial number of each production davit, along with records of its inspections and tests carried out under this section; and

(9) The original purchaser of each davit and the vessel on which it was installed, if known.

(d) *Independent laboratory responsibility.* The independent laboratory must perform or witness the inspections and tests under this section for each Coast Guard-approved davit to be installed on a U.S.-flagged vessel. If the manufacturer also produces davits for approval by other maritime safety administrations, the inspections may be coordinated with inspection visits for those administrations.

(e) *Production inspections and tests.* Each approved davit must be inspected and tested in accordance with the procedures in 46 CFR part 159, subpart 159.007 and the load test described in IMO Revised recommendation on testing, Part 2, paragraph 6.1.1 (incorporated by reference, see § 160.132–5).

§ 160.132–17 Marking and labeling.

(a) Each davit must be marked with a plate or label permanently affixed in a conspicuous place readily for inspection and sufficiently durable to withstand continuous exposure to environmental conditions at sea for the life of the davit.

(b) The plate or label must be in English, but may also be in other languages.

(c) The plate or label must contain the—

(1) Name and address of the manufacturer;

(2) Manufacturer's model identification;

(3) Name of the independent laboratory that witnessed the prototype or production tests;

(4) Serial number of the davit;

(5) U.S. Coast Guard approval number;

(6) Month and year of manufacture;

(7) Safe working load of the davit; and

(8) Word "SOLAS".

§ 160.132–19 Operating instructions and information for the ship's training manual.

(a) Each davit must have instructions and information for the ship's training manual that use the symbols from IMO Res. A.760(18) (incorporated by reference, see § 160.132–5) to describe the location and operation of the davit.

(b) The instructions and information required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their complete launching systems.

(c) The davit manufacturer must make operating instructions and information required by paragraph (a) of this section available in English to the purchaser of a davit approved by the Coast Guard.

§ 160.132–21 Operation and maintenance instructions.

(a) Each davit must have operation and maintenance instructions that—

(1) Follows the general format and content specified in IMO MSC.1 Circ. 1205 (incorporated by reference, see § 160.132–5); and

(2) Includes a checklist for use in monthly, external visual inspections of the davit.

(b) The davit manufacturer must make the manual required by paragraph (a) of this section available in English to the purchaser of a davit approved by the Coast Guard.

(c) The operation and maintenance instructions required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their complete launching systems.

§ 160.132–23 Procedure for approval of design or material change.

(a) Each change in design, material, or construction from the plans approved under 46 CFR 159.005–13 and § 160.132–13(h) of this subpart must be approved by the Commandant before being used in any production davit. The manufacturer must submit any such change following the procedures in § 160.132–9 of this subpart, but documentation on items that are unchanged from the plans approved under 46 CFR 159.005–13 and § 160.115–13(h) of this subpart need not be resubmitted.

(b) Unless determined by the Commandant to be unnecessary, a prototype davit with each change described in paragraph (a) of this section must be made and tested according to the procedures for new approvals in §§ 160.132–9 through 160.132–13 of this subpart.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

27. Add subpart 160.133 to read as follows:

Subpart 160.133—Release Mechanisms for Lifeboats and Rescue Boats (SOLAS)

Sec.

160.133–1 Scope.
160.133–3 Definitions.
160.133–5 Incorporation by reference.
160.133–7 Design, construction, and performance of release mechanisms.
160.133–9 Preapproval review.
160.133–11 [Reserved]
160.133–13 Approval inspections and tests for prototype release mechanisms.
160.133–15 Production inspections, tests, quality control, and conformance of release mechanisms.
160.133–17 Marking and labeling.
160.133–19 Operating instructions and information for the ship's training manual.
160.133–21 Operation and maintenance instructions.
160.133–23 Procedure for approval of design or material change.

Subpart 160.133—Release Mechanisms for Lifeboats and Rescue Boats (SOLAS)

§ 160.133–1 Scope.

This subpart prescribes standards, tests, and procedures for seeking Coast Guard approval of a release mechanism used for davit-launched and free-fall lifeboats approved under 46 CFR part 160, subpart 160.135, and rescue boats approved under 46 CFR part 160, subpart 160.156.

§ 160.133–3 Definitions.

In addition to the definitions in the IMO LSA Code (incorporated by reference, see § 160.133–5), in this subpart, the term:

Commandant means the Commandant (CG–5214), U.S. Coast Guard, 2100 2nd St SW., Stop 7126, Washington, DC 20593–7126.

Full load means the weight of the complete lifeboat or rescue boat including all required equipment, provisions, fuel, and the number of persons for which it is approved. This is also known as the "condition B" weight.

Independent laboratory has the same meaning as 46 CFR 159.001–3. A list of accepted independent laboratories is

available from the Commandant and online at *http://cgmix.uscg.mil.*

Light load means the weight of the complete lifeboat or rescue boat empty and does not include fuel, required equipment, or the equivalent weight of persons. This is also known as the "condition A" weight.

Officer In Charge, Marine Inspection (OCMI) means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations. The "cognizant OCMI" is the OCMI who has immediate jurisdiction over a vessel for the purpose of performing the duties previously described.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

§ 160.133–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at Commandant (CG–5214), U.S. Coast Guard, 2100 2nd St, SW., Stop 7126, Washington, DC 20593–7126 and is available from the sources indicated in this section.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959.

(1) ASTM A 36/A 36M–08 Standard Specification for Carbon Structural Steel, IBR approved for § 160.133–7 ("ASTM A 36").

(2) ASTM A 653/A 653M–08 Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process, IBR approved for §§ 160.133–7, 160.133–13, and 160.133–15. ("ASTM A 653").

(3) ASTM F 1166–07 Standard Practice for Human Engineering Design for Marine Systems, Equipment, and Facilities, IBR approved for § 160.133–7 ("ASTM F 1166").

(c) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London, SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution A.760(18), Symbols Related to Life-Saving Appliances and Arrangements, IBR approved for § 160.133–19 ("IMO Res. A.760(18)").

(2) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for §§ 160.133–7 and 160.133–13 ("IMO Revised recommendation on testing").

(3) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for § 160.133–7 ("IMO LSA Code").

(4) MSC Circular 980, Standardized life-saving appliance evaluation and test report forms, IBR approved for § 160.133–13 ("IMO MSC Circ. 980").

(5) MSC.1 Circular 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems, IBR approved for § 160.133–21 ("IMO MSC.1 Circ. 1205").

§ 160.133–7 Design, construction, and performance of release mechanisms.

(a) To seek Coast Guard approval of a release mechanism, a manufacturer must comply with, and each release mechanism must meet, the requirements of the following—

(1) IMO LSA Code, Chapter IV/4.4.7.6 (incorporated by reference, see § 160.133–5), and a release mechanism for free-fall lifeboats must also meet the applicable provisions of Chapter VI/6.1.4;

(2) IMO Revised recommendation on testing, Part 1/6.9 (incorporated by reference, see § 160.133–5);

(3) 46 CFR part 159; and

(4) This subpart.

(b) Each release mechanism must meet the following requirements—

(1) *Design.* All functions of the release mechanism, including removal of interlocks, operation of the release handle, resetting the hooks, and reattaching the falls to the hooks, must be designed to be operable by persons wearing immersion suits;

(2) Each release mechanism should be designed following standard human engineering practices described in ASTM F 1166 (incorporated by reference, see § 160.133–5). Design limits should be based on a range from the fifth percentile female to the ninety-fifth percentile male values for critical body dimensions and functional capabilities as described in ASTM F 1166. The dimensions for a person wearing an immersion suit correspond to the arctic clothed dimensions of ASTM F 1166;

(3) *Steel.* Each major structural component of each release mechanism must be constructed of steel. Other materials may be used if accepted by the Commandant as equivalent or superior. Sheet steel and plate must be low-carbon, commercial quality, either corrosion resistant or galvanized as per ASTM A 653 (incorporated by reference, see § 160.133–5), coating designation G115. Structural steel plates and shapes must be carbon steel as per ASTM A 36 (incorporated by reference, see § 160.133–5). All steel products, except corrosion resistant steel, must be galvanized to provide high-quality zinc coatings suitable for the intended service life in a marine environment. Each fabricated part must be galvanized after fabrication. Corrosion resistant steel must be a standard 302 stainless steel or have equal or superior corrosion resistant characteristics.

(4) *Welding.* Welding must be performed by welders certified by the Commandant, American Bureau of Shipping, U.S. Navy, or an independent laboratory accepted by the Commandant. Only electrodes intended for use with the material being welded may be used. All welds must be checked using appropriate non-destructive tests.

(5) Metals in contact with each other must be either galvanically compatible or insulated with suitable non-porous materials. Provisions must also be made to prevent loosening or tightening resulting from differences of thermal expansion, freezing, buckling of parts, galvanic corrosion, or other incompatibilities;

(6) Screws, nuts, bolts, pins, keys, and other similar hardware, securing moving parts must be fitted with suitable lock washers, cotter pins, or locks to prevent them from coming adrift;

(7) The on-load operation of the release mechanism must require two separate, deliberate actions by the operator;

(8) The mechanical protection required by LSA Code Chapter IV/4.4.7.6.2.2 must only be able to be engaged when the release mechanism is properly and completely reset. Proper engagement of the mechanical protection must be visually indicated;

(9) The release and recovery procedures required by LSA Code Chapter IV/4.4.7.6.5 must be included as an illustrated operation instruction

plate or placard. The plate or placard must be corrosion resistant and weatherproof and must be marked with the word "DANGER". The illustrations must correspond exactly to those used in the instruction and maintenance manual provided by the manufacturer;

(10) The release lever or control must be red in color, and the area immediately surrounding the control must be a sharply contrasting light color;

(11) The release lever and its connection to the release mechanism must be of sufficient strength so that there is no deformation of the release lever or the release control assembly during on-load release;

(12) Positive means of lubrication must be provided for each bearing which is not permanently lubricated. Points of lubrication must be so located that they are clearly visible and accessible in the installed position in the boat;

(13) A hydraulic system, if used to activate the release mechanism, must be in accordance with 46 CFR part 58, subpart 58.30, with hose and fittings in accordance with 46 CFR part 56, subpart 56.60, except that—

(i) Push-on type fittings such as Aeroquip 1525–X, 25156–X, and FC332–X are not permitted;

(ii) The length of nonmetallic flexible hose is limited to 760 mm (30 in); and

(iii) If a hand pump is provided, adequate space must be provided for the hand pump or hand operation;

(14) Each release mechanism designed to launch a boat by free-fall must not be able to carry any weight until the release mechanism is properly reset, and each of the two independent activation systems required to be operated from inside the boat must require at least two independent actions from different locations inside the boat to release the hook; and

(15) Each release mechanism must have mechanical protection against accidental or premature release that can only be engaged when the release mechanism is properly and completely reset. Proper engagement of the mechanical protection must be visually indicated.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

§ 160.133–9 Preapproval review.

(a) Except as provided in paragraph (c) of this section, the Commandant must conduct the preapproval review, required by this section, in accordance with 46 CFR 159.005–5.

(b) *Manufacturer requirements.* To seek Coast Guard approval of a release mechanism, the manufacturer must submit an application to the Commandant meeting the requirements of 46 CFR 159.005–5 for preapproval review. To meet the requirements of 46 CFR 159.005–5(a)(2), the manufacturer must submit in triplicate—

(1) A list of drawings, specifications, manuals, and any other documentation submitted, with each document identified by number, title, revision issue, and date;

(2) General arrangement and assembly drawings, including principal dimensions;

(3) Stress calculations for all load carrying parts, including the release hooks, release mechanisms, and connections;

(4) Hydraulic systems drawings and specifications, if installed;

(5) Drawings of all signs and placards showing actual inscription, format, color, and size;

(6) An operation, maintenance, and training manual as described in §§ 160.133–19 and 160.133–21 of this subpart;

(7) A description of the quality control procedures and recordkeeping that will apply to the production of the release mechanism, which must include but is not limited to—

(i) The system for checking material certifications received from suppliers;

(ii) The method for controlling the inventory of materials;

(iii) The method for checking quality of fabrication and joints, including welding inspection procedures; and

(iv) The inspection checklists used during various stages of fabrication to assure that the approved release mechanism complies with the approved plans and the requirements of this subpart;

(8) Full details of any other unique capability;

(9) Any other drawing(s) necessary to show that the release mechanism complies with the requirements of this subpart;

(10) The location or address of all manufacturing sites, including the name and address of any subcontractors, where the release mechanism will be constructed; and

(11) The name of the independent laboratory that will perform the duties prescribed in § 160.133–15 of this subpart.

(c) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may conduct preapproval review required by this section, so long as the preapproval review is conducted in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(d) *Plan quality.* The plans and specifications submitted to the Commandant under this section must—

(1) Be provided in English, including all notes, inscriptions, and designations for configuration control;

(2) Address each of the applicable items in paragraph (b) of this section in sufficient detail to show that the release mechanism meets the construction requirements of this subpart;

(3) Accurately depict the proposed release mechanism;

(4) Be internally consistent;

(5) Be legible; and

(6) If reviewed by an independent laboratory under paragraph (c) of this section, include the independent laboratory's attestation that the plans meet the quality requirements of this section.

(e) *Alternatives.* Alternatives in materials, parts, or construction, and each item replaced by an alternative, must be clearly indicated as such in the plans and specifications submitted to the Commandant under this section.

(f) *Coast Guard review.* If the plans or specifications do not comply with the requirements of this section, Coast Guard review may be suspended, and the applicant notified accordingly.

§ 160.133–11 [Reserved]

§ 160.133–13 Approval inspections and tests for prototype release mechanisms.

(a) If the manufacturer is notified that the information submitted in accordance with § 160.133–9 of this subpart is satisfactory to the Commandant, the manufacturer may proceed with fabrication of the prototype release mechanism, and the approval inspections and tests required under this section.

(b) Except as provided in paragraph (f) of this section, the Coast Guard must conduct the approval inspections and witness the approval tests required under this section.

(c) *Manufacturer requirements.* To proceed with approval inspections and tests required by this section, the manufacturer must—

(1) Notify the Commandant and cognizant Officer in Charge, Marine Inspection (OCMI) of where the approval inspections and tests required under this section will take place, and such notification must be in sufficient time to allow making travel arrangements;

(2) Arrange a testing schedule that allows for a Coast Guard inspector to travel to the site where the testing is to be performed;

(3) Admit the Coast Guard inspector to any place where work or testing is performed on release mechanisms or their component parts and materials for the purpose of—

(i) Conducting inspections as necessary to determine that the prototype—

(A) Conforms with the plans reviewed under § 160.133–9 of this subpart;

(B) Is constructed by the methods and with the materials specified in the plans reviewed under § 160.133–9 of this subpart; and

(C) When welding is part of the construction process, is constructed by the welding procedure and materials as per the plans reviewed under § 160.133–9 of this subpart and the welders are appropriately qualified;

(ii) Assuring that the quality-assurance program of the manufacturer is satisfactory;

(iii) Witnessing tests; and

(iv) Taking samples of parts or materials for additional inspections or tests; and

(4) Make available to the Coast Guard inspector the affidavits or invoices from the suppliers of all essential materials used in the production of release mechanisms, together with records identifying the lot or serial numbers of the release mechanisms in which such materials were used.

(d) *Tests*—(1) *Prototype release mechanism readiness.* All tests must be conducted on a complete release mechanism.

(2) *IMO Revised recommendation on testing.* Each prototype release mechanism of each design must pass each of the tests described in IMO Revised recommendation on testing, Part 1, paragraph 6.9 (incorporated by reference, *see* § 160.133–5) applicable to davit-launched or free-fall lifeboats. Tests must be conducted in accordance with these paragraphs of IMO Revised recommendation on testing, Part 1, with the following modifications—

(i) *Visual inspection.* Each release mechanism must be visually inspected to confirm—

(A) Compliance with this subpart;

(B) Conformance with the examined plans; and

(C) Ease of operation and maintenance;

(ii) *Operation.* Operation of the off-load control, for a davit-launched boat, must be tested to confirm that the release lever cannot be shifted to release the boat in either the full load or light load condition. For a free-fall boat, the operation of the hook release must be demonstrated using both activation systems and may be tested without launching the boat;

(iii) *Materials.* Steel meeting ASTM A 653 (incorporated by reference, see § 160.133–5) must meet the coating mass and bend tests requirement specified under ASTM A 653 after galvanizing or other anti-corrosion treatment has been applied. This compliance can be ascertained through a supplier's certification or by conducting actual tests;

(iv) *Tensile tests.* The release mechanism hook assembly and supporting structure must be tensile tested in a jig built to load the hook assembly in the same way it would be loaded when installed in a boat. The hook assembly will be approved for a maximum of one-sixth of the highest load applied without failure;

(v) *Universal joints.* This test is required if the release mechanism employs universal joints to transmit the release power from the control to the hook release. One of each type and size of universal joint must be set up in a jig with the angles of leads set at 0 (zero), 30, and 60 degrees, respectively. A torque of 540 Nm (400 ft lb) must be applied. This torque must be applied with the connecting rod secured beyond the universal and with the lever arm in the horizontal position. There must be no permanent set, or undue stress, as a result of this test; and

(vi) *Hydraulic controls.* If the release mechanism includes a fluid power and control system, a test of the hydraulic controls must be conducted in accordance with 46 CFR 58.30–35.

(e) *Test waiver.* The Commandant may waive certain tests for a release mechanism identical in construction to smaller and larger release mechanisms that have successfully completed the tests. However, stress calculations in accordance with § 160.133–9(b)(3) of this subpart must still be submitted. Tests associated with release mechanism components that have already been accepted by the Commandant are not required to be repeated.

(f) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may perform approval inspections and witness approval tests required by this section so long as the inspections and tests are performed and witnessed in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(g) After completion of approval inspections and tests required by this section, the manufacturer must comply with the requirements of 46 CFR 159.005–9(a)(5) by preparing and submitting to the Commandant for review—

(1) The prototype approval test report containing the same information recommended by IMO MSC Circ. 980 (incorporated by reference, see § 160.133–5). The report must include a signed statement by the Coast Guard inspector (or independent laboratory as permitted under paragraph (f) of this section) who witnessed the testing, indicating that the report accurately describes the testing and its results; and

(2) The final plans of the release mechanism as built, in triplicate. The plans must include the instructions for training and maintenance described in §§ 160.133–19 and 160.133–21 of this subpart, respectively.

(h) The Commandant will review the report and plans submitted under paragraph (g) of this section, and if satisfactory to the Commandant, will approve the plans under 46 CFR 159.005–13.

§ 160.133–15 Production inspections, tests, quality control, and conformance of release mechanisms.

(a) Unless the Commandant directs otherwise, an independent laboratory must conduct or witness inspections, tests, and oversight required by this section. Production inspections and tests of release mechanisms must be carried out in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007 and in this section, unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(b) *Manufacturer's responsibility.* The manufacturer must—

(1) Institute a quality control procedure to ensure that all production release mechanisms are produced to the same standard, and in the same manner, as the prototype release mechanism approved by the Commandant. The manufacturer's quality control personnel must not work directly under the department or person responsible for either production or sales;

(2) Schedule and coordinate with the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) to ensure that all tests are performed as described in this section;

(3) Submit to the Commandant, a yearly report that contains the following—

(i) Serial number and date of final assembly of each release mechanism constructed;

(ii) The name of the representative of the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section); and

(iii) Serial number and model of the lifeboat or rescue boat in which the release mechanism is installed, if known;

(4) Ensure that the arrangement and materials entering into the construction of the release mechanism are in accordance with plans approved under § 160.133–13(h) of this subpart;

(5) Allow an independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) access to any place where materials are stored for the release mechanism, work or testing is performed on release mechanism or their component parts and materials, or records are retained to meet the requirements of paragraph (c) of this section, for the purpose of—

(i) Assuring that the quality control program of the manufacturer is satisfactory;

(ii) Witnessing tests; or

(iii) Taking samples of parts or materials for additional inspections or tests; and

(6) Ensure that the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) conducts the inspections and witnesses the tests required by paragraph (e) of this section, and further conducts a visual inspection to verify that the release mechanisms are being made in accordance with the approved plans approved under § 160.133–13(h) of this subpart and the requirements of this subpart.

(c) *Recordkeeping.* The manufacturer must maintain records in accordance with 46 CFR 159.007–13. The manufacturer must keep records of all items listed in this section for at least 5 years from the date of termination of approval of each release mechanism. The records must include—

(1) A copy of this subpart, other CFR sections referenced in this subpart, and each document listed in § 160.133–5 of this subpart;

(2) A copy of the approved plans, documentation, and certifications;

(3) A current certificate of approval for each approved release mechanism;

(4) Affidavits, certificates, or invoices from the suppliers identifying all essential materials used in the production of approved release mechanisms, together with records identifying the serial numbers of the release mechanisms in which such materials were used;

(5) Records of all structural welding and name of operator(s);

(6) Records of welder certificates, training, and qualifications;

(7) Date and results of calibration of test equipment and the name and address of the company or agency that performed the calibration;

(8) The serial number of each production release mechanism, along with records of its inspections and tests carried out under this section; and

(9) The original purchaser of each release mechanism and the vessel on which it was installed, if known.

(d) *Independent laboratory responsibility.* The independent laboratory must perform or witness the inspections and tests under paragraph (e) of this section for each Coast Guard-approved release mechanism to be installed on a U.S.-flagged vessel. If the manufacturer also produces release mechanisms for approval by other maritime safety administrations, the inspections may be coordinated with inspection visits for those administrations.

(e) *Production inspections and tests.* Each finished release mechanism must be visually inspected. The manufacturer must develop and maintain a visual inspection checklist designed to ensure that all applicable requirements have been met. Each approved release mechanism constructed with non-corrosion resistant steel must be confirmed to have met the coating mass and bend tests requirement specified under ASTM A 653 (incorporated by reference, see § 160.133–5) after galvanizing or other anti-corrosion treatment has been applied. This compliance can be ascertained through a supplier's certification papers or through conducting actual tests.

§ 160.133–17 Marking and labeling.

(a) Each hook body of a release mechanism must be marked with a plate or label permanently affixed in a conspicuous place readily accessible for inspection and sufficiently durable to withstand continuous exposure to environmental conditions at sea for the life of the release mechanism.

(b) The plate or label must be in English, but may also be in other languages.

(c) The plate or label must contain the—

(1) Manufacturer's name and model identification;

(2) Name of the independent laboratory that witnessed the prototype or production tests;

(3) Serial number of the release mechanism;

(4) U.S. Coast Guard approval number;

(5) Month and year of manufacture;

(6) Safe working load of the release mechanism; and

(7) The word "SOLAS."

§ 160.133–19 Operating instructions and information for the ship's training manual.

(a) Each release mechanism must have instructions and information for the ship's training manual that use the symbols from IMO Res. A.760(18) (incorporated by reference, see § 160.133–5) to describe the location and operation of the release mechanism.

(b) The instructions and information required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their launching systems.

(c) The release mechanism manufacturer must make the instructions and information required by paragraph (a) of this section available—

(1) In English to purchasers of release mechanisms approved by the Coast Guard; and

(2) In the form of an instruction placard providing simple procedures and illustrations for operation of the release mechanism. The placard must be not greater than 36 cm (14 in) by 51 cm (20 in), and must be made of durable material and suitable for display inside a lifeboat and rescue boat and/or near launching appliances on vessels.

§ 160.133–21 Operation and maintenance instructions.

(a) Each release mechanism must have operation and maintenance instructions that—

(1) Follows the general format and content specified in IMO MSC.1 Circ. 1205 (incorporated by reference, see § 160.133–5); and

(2) Includes a checklist for use in monthly, external visual inspections of the release mechanism.

(b) The release mechanism manufacturer must make the manual required by paragraph (a) of this section available in English to purchasers of a release mechanism approved by the Coast Guard.

(c) The operation and maintenance instructions required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their launching systems.

§ 160.133–23 Procedure for approval of design, material, or construction change.

(a) Each change in design, material, or construction from the plans approved under 46 CFR 159.005–13 and § 160.133–13(h) of this subpart must be approved by the Commandant before being used in any production release

mechanism. The manufacturer must submit any such change following the procedures set forth in § 160.133–9 of this subpart, but documentation on items that are unchanged from the plans approved under 46 CFR 159.005–13 and § 160.133–13(h) of this subpart need not be resubmitted.

(b) Unless determined by the Commandant to be unnecessary, a prototype release mechanism with each change described in paragraph (a) of this section must be made and tested according to the procedures for new approvals in §§ 160.133–9 through 160.133–13 of this subpart.

(c) Determinations of equivalence of design, material, or construction will be made by the Commandant only.

28. Add subpart 160.135 to read as follows:

Subpart 160.135—Lifeboats (SOLAS)

Sec.
160.135–1 Scope.
160.135–3 Definitions.
160.135–5 Incorporation by reference.
160.135–7 Design, construction, and performance of lifeboats.
160.135–9 Preapproval review.
160.135–11 Fabrication of prototype lifeboats for approval.
160.135–13 Approval inspections and tests for prototype lifeboats.
160.135–15 Production inspections, tests, quality control, and conformance of lifeboats.
160.135–17 Marking and labeling.
160.135–19 Operating instructions and information for the ship's training manual.
160.135–21 Operation and maintenance instructions.
160.135–23 Procedure for approval of design or material change.

Subpart 160.135—Lifeboats (SOLAS)

§ 160.135–1 Scope.

This subpart prescribes standards, tests, and procedures for seeking Coast Guard approval of a lifeboat.

§ 160.135–3 Definitions.

In addition to the definitions in the IMO LSA Code (incorporated by reference, see § 160.135–5), in this subpart, the term:

Commandant means the Commandant (CG–5214), U.S. COAST GUARD, 2100 2ND ST, SW., STOP 7126, WASHINGTON, DC 20593–7126.

Fiberglass Reinforced Plastic (FRP) is a composite structural material formed by electrical-grade glass fibers in Coast Guard accepted catalyst activated resin.

Full load means the weight of the complete lifeboat including all required equipment, provisions, fuel, and the number of persons for which it is approved. This is also known as the "condition B" weight.

Independent laboratory has the same meaning as 46 CFR 159.001–3. A list of accepted independent laboratories is available from the Commandant and online at *http://cgmix.uscg.mil.*

Light load means the weight of the complete lifeboat empty and does not include fuel, required equipment, or the equivalent weight of persons. This is also known as the "condition A" weight.

Officer In Charge, Marine Inspection (OCMI) means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations. The "cognizant OCMI" is the OCMI who has immediate jurisdiction over a vessel for the purpose of performing the duties previously described.

Positive Stability is the condition of a lifeboat such that when it is displaced a small amount in any direction from upright, it returns on its own to the position before displacement.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

§ 160.135–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428–2959.

(1) ASTM A 36/A 36M–08 Standard Specification for Carbon Structural Steel, IBR approved for §§ 160.135–7 and 160.135–15 ("ASTM A 36").

(2) ASTM A 653/A 653M–08 Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process, IBR approved for §§ 160.135–7, 160.135–11, and 160.135–15 ("ASTM A 653").

(3) ASTM B 127–05(2009) Standard Specification for Nickel-Copper Alloy (UNS N04400) Plate, Sheet, and Strip, IBR approved for § 160.135–7 ("ASTM B 127").

(4) ASTM B 209–07 Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate, IBR approved for § 160.135–7 ("ASTM B 209").

(5) ASTM D 638–08 Standard Test Method for Tensile Properties of Plastics, IBR approved for § 160.135–11 ("ASTM D 638").

(6) ASTM D 790–07e1 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials, IBR approved for § 160.135–11 ("ASTM D 970").

(7) ASTM D 2584–08 Standard Test Method of Ignition Loss for Cured Reinforced Resins, IBR approved for §§ 160.135–11 and 160.135–15 ("ASTM D 2584").

(8) ASTM D 4029–09 Standard Specification for Finished Woven Glass Fabrics, IBR approved for § 160.135–7 ("ASTM D 4029").

(9) ASTM F 1166–07 Standard Practice for Human Engineering Design for Marine Systems, Equipment, and Facilities, IBR approved for §§ 160.135–7 and 160.135–13 ("ASTM F 1166").

(c) General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 22200 Crystal Drive, 11th Floor, Arlington, VA 22202, 703–605–5400.

(1) Federal Standard 595C—Colors Used in Government Procurement, IBR approved for § 160.135–7 ("FED–STD–595C").

(2) [Reserved]

(d) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution A.658(16), Use and Fitting of Retro-reflective Materials on Life-saving Appliances, IBR approved for § 160.135–7 ("IMO Res. 658(16)").

(2) IMO Resolution A.760(18), Symbols Related to Life-Saving Appliances and Arrangements, IBR approved for §§ 160.135–7 and 160.135–19 ("IMO Res. A.760(18)").

(3) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for

§§ 160.135–7 and 160.135–13 ("IMO Revised recommendation on testing").

(4) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for §§ 160.135–7 and 160.135–13 ("IMO LSA Code").

(5) MSC Circular 980, Standardized life-saving appliance evaluation and test report forms, IBR approved for §§ 160.135–7 and 160.135–13 ("IMO MSC Circ. 980").

(6) MSC.1 Circular 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems, IBR approved for § 160.135–21 ("IMO MSC.1 Circ. 1205").

(e) International Organization for Standardization (ISO): ISO Central Secretariat [ISO Copyright Office], Case Postale 56, CH–1211 Geneve 20, Switzerland.

(1) ISO 14125:1998 Fibre-reinforced plastic composites—Determination of flexural properties, IBR approved for § 160.135–11 ("ISO 14125").

(2) ISO 527–1:1993 Plastics—Determination of tensile properties, IBR approved for § 160.135–11 ("ISO 527").

(3) ISO 1172:1996 Textile-glass-reinforced plastics—Prepregs, moulding compounds and laminates—Determination of the textile-glass and mineral-filler content—Calcination methods, IBR approved for §§ 160.135–11 and 160.135–15 ("ISO 1172").

(f) Military Specifications and Standards, Standardization Order Desk, Building 4D, 700 Robins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/.*

(1) A–A–55308 Cloth And Strip, Laminated Or Coated, Vinyl Nylon Or Polyester, High Strength, Flexible, IBR approved for § 160.135–7 ("A–A–55308").

(2) MIL–C–19663D: Cloth, Woven Roving, For Plastic Laminate, 4 AUG 1998, IBR approved for § 160.135–7 ("MIL–C–19663D").

(3) MIL–P–17549D(SH): Plastic Laminates, Fibrous Glass Reinforced, Marine, 31 AUG 1981, IBR approved for § 160.135–7 ("MIL–P–17549D(SH)").

§ 160.135–7 Design, construction, and performance of lifeboats.

(a) To seek Coast Guard approval of a lifeboat, a manufacturer must comply with, and each lifeboat must meet, the requirements of the following—

(1) IMO LSA Code, Chapter IV (incorporated by reference, see § 160.135–5) applicable to the type of lifeboat;

(2) IMO Revised recommendation on testing, Part 1/6 (incorporated by reference, see § 160.135–5) applicable to the type of lifeboat;

(3) 46 CFR part 159; and

(4) This subpart.

(b) Each lifeboat must meet the following requirements:

(1) *Design.* (i) Each lifeboat, other than a totally enclosed lifeboat, must be designed to be operable by persons wearing immersion suits.

(ii) Each lifeboat should be designed following standard human engineering practices described in ASTM F 1166 (incorporated by reference, see § 160.135–5). Design limits should be based on a range from the fifth percentile female to the ninety-fifth percentile male values for critical body dimensions and functional capabilities as described in ASTM F 1166. The dimensions for a person wearing an immersion suit correspond to the arctic clothed dimensions of ASTM F 1166.

(2) *Visibility from operator's station.* (i) The operator's station must be designed such that the operator, when seated at the control station, has visibility 360 degrees around the lifeboat, with any areas obstructed by the lifeboat structure or its fittings visible by moving the operator's head and torso.

(ii) The operator, while still being able to steer and control the speed of the lifeboat, must be able to see the water—

(A) Over a 90 degree arc within 3 m (9 ft, 10 in) of each side of the lifeboat;

(B) Over a 30 degree arc within 1 m (3 ft, 3 in) of each side of the lifeboat; and

(C) Within 0.5 m (1 ft, 8 in) of the entrances designated for recovering persons from the water.

(iii) In order to see a person in the water during recovery or docking operations, a hatch must be provided so that the operator can stand with his or her head outside the lifeboat for increased visibility, provided the operator can still steer and control the speed of the lifeboat.

(3) *Construction.* Each major rigid structural component of each lifeboat must be constructed of steel, aluminum, Fiber Reinforced Plastic (FRP), or materials accepted by the Commandant as equivalent or superior.

(i) *General.* Metals in contact with each other must be either galvanically compatible or insulated with suitable non-porous materials. Provisions must also be made to prevent loosening or tightening resulting from differences of thermal expansion, freezing, buckling of parts, galvanic corrosion, or other incompatibilities.

(ii) *Steel.* Sheet steel and plate must be low carbon, commercial quality, either corrosion resistant or galvanized as per ASTM A 653, coating designation G90 (incorporated by reference, see § 160.135–5). Structural steel plates and shapes must be carbon steel as per ASTM A 36 (incorporated by reference, see § 160.135–5), or an equivalent or superior steel accepted by the Commandant. All steel products, except corrosion resistant steel, must be galvanized to provide high quality zinc coatings suitable for the intended service life in a marine environment. Corrosion resistant steel must be a standard 302 stainless steel or have equal or superior corrosion resistant characteristics.

(iii) *Aluminum.* Aluminum and aluminum alloys must conform to ASTM B 209 (incorporated by reference, see § 160.135–5) and be high purity for good marine corrosion resistance, free of iron, and containing not more than 0.6 percent copper.

(iv) *Fiber Reinforced Plastic.*

(A) *Resin.* Any resin used for the hull, canopy, hatches, rigid covers, and enclosures for the engine, transmission, and engine accessories, must be fire retardant and accepted by the Commandant in accordance with 46 CFR part 164, subpart 164.017.

(B) *Glass reinforcement.* Any glass reinforcement used must have good laminated wet strength retention and must meet the appropriate specification in this paragraph. Glass cloth must be a finished fabric woven from "E" electrical glass fiber yarns meeting ASTM D 4029–09 commercial style designation 1564 (incorporated by reference, see § 160.135–5). Woven roving must conform to MIL–C–19663D (incorporated by reference, see § 160.135–5). Other glass materials equivalent or superior in strength, design, wet out, and efficiency will be given consideration on specific request to the Commandant.

(C) *Laminate.* All exposed surfaces of any finished laminate must present a smooth finish, and there must be no protruding surface fibers, open voids, pits, cracks, bubbles, or blisters. The laminate must be essentially free from resin-starved or overimpregnated areas, and no foreign matter must remain in the finished laminate. The entire laminate must be fully cured and free of tackiness, and must show no tendency to delaminate, peel, or craze in any overlay. The laminate must not be released from the mold until a Barcol hardness reading of not less than 40–55 is obtained from at least 10 places on the non-gel coated surface, including all interior inner and outer hull surfaces and built-in lockers. The mechanical properties of the laminate must meet the requirements for a Grade 3 laminate as

specified in Table I of MIL–P–17549D(SH) (incorporated by reference, see § 160.135–5). Other grades will be given consideration on specific request to the Commandant.

(4) *Welding.* Welding must be performed by welders certified by the Commandant, American Bureau of Shipping, U.S. Navy, or an independent laboratory accepted by the Commandant. Only electrodes intended for use with the material being welded may be used. All welds must be checked using appropriate non-destructive tests.

(5) *Lifeboat buoyancy.* (i) The buoyancy material must be accepted by the Commandant as meeting the performance requirements of the IMO Revised recommendation on testing, Part 1, 6.2.2 to 6.2.7, with a density of 32 ± 8 kg/m^3 (2 ± 0.5 lb/ft^3). The buoyancy foam or lifeboat manufacturer must certify the results of the testing to IMO Revised recommendation on testing, Part 1, 6.2.2 to 6.2.7 and submit those results to the Commandant. A list of accepted buoyancy foams may be obtained from the Commandant upon request and online at *http://cgmix.uscg.mil.*

(ii) All voids in the hull and canopy required to provide buoyancy for positive stability and self righting must be completely filled with Coast Guard accepted buoyancy material.

(6) *Engines.* (i) In order to be accepted by the Commandant, any compression ignition engine fitted to an approved lifeboat must meet the U.S. Environmental Protection Agency emission requirements in 40 CFR part 89, part 94, or part 1042, as applicable, and have reports containing the same information as recommended by MSC Circ. 980 (incorporated by reference, see § 160.135–5) certified and witnessed by a U.S. Coast Guard inspector or an independent laboratory.

(ii) A hydraulic system, if used to start the engine, must be in accordance with 46 CFR part 58, subpart 58.30, with hose and fittings in accordance with 46 CFR part 56, subpart 56.60, except that—

(A) Push-on type fittings such as Aeroquip 1525–X, 25156–X, and FC332–X are not permitted; and

(B) The length of nonmetallic flexible hose is limited to 760 mm (30 in). Longer, nonmetallic flexible hoses may be allowed in emergency steering systems at the discretion of the Commandant.

(iii) If a hand pump is provided, or if the engine has a manual starting system, adequate space must be provided for the hand pump or hand start operation.

(7) *Fuel system.* (i) The fuel system must meet 46 CFR 56.50–75(b) and, except as specified in this paragraph, the fuel tank must meet 46 CFR 58.50–10.

(ii) Tanks constructed with—

(A) *Aluminum* must be at least 5 mm (0.20 in) thick of ASTM B 209 or 5086 alloy;

(B) *Nickel-copper* must be at least 0.9 mm (0.0375 in) thick of ASTM B 127 hot-rolled sheet or plate;

(C) *Steel or iron* must be at least 1.9 mm (0.0747 in) thick. Diesel tanks of steel or iron must not have interior galvanizing;

(D) *Fiberglass reinforced plastic* must be at least 5 mm (0.187 in) thick; be sealed against porosity by at least one ply of chopped strand mat; be reinforced in the way of tank openings; be fitted with corrosion-resistant fittings; have each joint at the top of the tank; and have each joint bonded and through-bolted; or

(E) *Roto-molded plastic* must be at least 5 mm thick; must meet the requirements of 33 CFR 183.510 (a), (b), and (e) regardless of tank capacity; must be able to pass all static pressure tests as required in 33 CFR 183.510 at a minimum pressure of 5 psi; and be fitted with corrosion-resistant fittings.

(iii) Each fuel tank over 0.75 m (30 in) long must be baffled at intervals not exceeding 0.45 m (18 in).

(iv) A fuel level indicator must be provided for each fuel tank.

(v) Any fuel tank vent piping must be at least 6 mm (0.25 in) outside diameter tubing.

(vi) A shut-off valve must be provided at the fuel tank and must not be provided at the fuel pump. The valve must be clearly labeled. The position of the valve must be clearly indicated by a permanent marking inside the lifeboat. The marking must be an arrow pointing in the direction of the valve, and the words "FUEL SHUT–OFF VALVE" must be in a color that contrasts with their background. The marking must be legible to a person within the vicinity of the engine.

(8) *Starting system batteries.* Any battery fitted in a totally enclosed lifeboat must be stored in a sealed compartment with exterior venting. If the lifeboat has more than one engine, then only one starting battery is required per engine.

(9) *Exhaust.* Engine exhaust must be routed away from bilge and potential oil drips. Any paint used on engines, manifolds, or exhaust must not give off fumes when heated. All exhaust lagging must be non-absorbent.

(10) *Propeller guard.* Each propeller on a lifeboat must be fitted with a propeller guard with a maximum opening of 76 mm (3 in) on all sides on which a person is likely to be exposed.

(11) *Control and steering station.* The operator's control and steering station must have complete lifeboat lowering and launching, hook release, engine throttle, steering controls, and if applicable, an air system and water spray system.

(i) The throttle must be a continuous manual control and must be able to be set and locked at any position.

(ii) The control and steering station must be designed and laid out in accordance with ASTM F 1166 sections 9 and 10, so that controls and displays are unambiguous, accessible, and easy to reach and use from the operator's normal seated position, while wearing an immersion suit or a lifejacket.

(iii) Each control, gauge, or display must be identified by a marking posted on, above, or adjacent to the respective item. Each control must operate in a logical manner and be marked with an arrow to show direction of movement of control which will cause an increased response. Each gauge must be marked with the normal operating range and indicate danger or abnormal conditions. Each marking must be permanent and weatherproof.

(iv) Gauges, and audio and visual alarms must be provided to monitor at least the following parameters—

(A) Coolant temperature, for a liquid cooled engine;

(B) Oil pressure, for an engine with an oil pump;

(C) Tachometer, for an engine not provided with over-speed protection; and

(D) State of charge, or rate of charge, for each rechargeable engine starting power source.

(12) *Drain plug.* The position of each drain plug must be clearly indicated by a permanent marking inside the lifeboat. The marking must be an arrow pointing in the direction of the plug, and the words "DRAIN PLUG" must be 76 mm (3 in) high and have letters of a color that contrast with their background. The marking must be clearly visible to a person within the vicinity of the drain plug.

(13) *Remote steering.* The procedure to change over from remote to local steering must be simple, not require the use of tools, and be clearly posted. There must be sufficient clear space to install, operate, remove, and stow the removable tiller arm. The tiller arm and its connection to the rudder stock must be of sufficient strength so that there is no slippage or bending of the tiller arm. Rudder stops or other means must be provided to prevent the rudder from turning too far on either side.

(14) *Lifelines.* Buoyant lifelines must be of ultraviolet resistant material.

(15) *Rails provided as handholds.* Rails provided as handholds to cling when the lifeboat is overturned must extend for half the length of the lifeboat on both sides of the hull, and the clearance between the rail and hull must also be at least 38 mm (1.5 in). The rails must be attached to the hull below the chine or turn of the bilge, must be faired to prevent any fouling, and not project beyond the widest part of the lifeboat.

(16) *Storage compartments and collection and storage of rainwater.* (i) Each storage compartment must be supported and secured against movement. It must have adequate hand access for removing and storing the required equipment, provisions, or water, and for cleaning the inside of the compartment.

(ii) The rain water collecting device may be incorporated into the design of the canopy or may be a separate unit to be mounted outside the lifeboat. The device must have a projected horizontal area of at least 1 m^2 (10.7 ft^2) collection area and be designed to function unattended.

(iii) Provision must be made to continue to collect water in the storage compartment while drawing water to fill a cup. The compartment must have a means of drainage and adequate access to allow filling the graduated drinking cup required to be carried as part of the lifeboat equipment.

(17) *Release mechanism.* Each release mechanism must be identified at the application for approval of the prototype lifeboat and must be approved under 46 CFR part 160, subpart 160.133. The release lever or control in the lifeboat must be red in color, and the area immediately surrounding the control must be a sharply contrasting light color. An illustrated operating instruction plate or placard showing the correct off-load and emergency on-load release procedure and recovery procedure must be posted so that it is visible and legible from the helmsman's normal operating position. The plate or placard must be corrosion resistant and weatherproof and must be marked with the word "DANGER".

(18) *Painter release.* Any painter release must be located such that the lifeboat operator can readily release the painter from the operator's control and steering station.

(19) *Canopy lamp.* Any exterior lifeboat position-indicating light must be approved by the Commandant under approval series 161.101.

(20) *Manually-controlled interior light.* Any interior light must be approved by the Commandant under approval series 161.101.

(21) *Lifeboat equipment.* Each lifeboat must be designed to accommodate and carry the equipment as specified in 46 CFR 199.175.

(22) *Oars.* Oars are not required on a lifeboat with more than one engine, provided one engine can be operated while the other is disabled.

(23) *Bilge pump.* Each lifeboat that is not automatically self-bailing, must be fitted with a manual bilge pump approved under 46 CFR part 160, subpart 160.044. Each such lifeboat with a capacity of 100 persons or more must carry an additional approved manual bilge pump or an engine-powered bilge pump.

(24) *Exterior color.* The primary color of the exterior of the canopy and interior of partially enclosed lifeboats visible from the air must be a highly visible color equivalent to vivid reddish orange color number 12197 of FED–STD–595C (incorporated by reference, see § 160.135–5), or a durable fluorescent color of a similar hue.

(25) *Self-contained air supply system and fire protection system operating instructions.* Each compressed gas air cylinder must meet the requirements in 46 CFR 147.60. The cylinders must be accessible for removal and charging in place. Water-resistant instructions for starting the water spray and air supply, if fitted, must be provided and mounted in a conspicuous place near the system controls.

(26) *Navigating lights.* Each lifeboat must have navigation lights that are in compliance with the applicable sections of the International and Inland Navigation Rules and meet 46 CFR 111.75–17.

(27) *Retroreflective material.* The exterior of each lifeboat and its canopy must be marked with Type II retroreflective material approved under 46 CFR part 164, subpart 164.018. The arrangement of the retroreflective material must comply with IMO Res. A.658(16) (incorporated by reference, see § 160.135–5).

(28) *Permanently attached foldable canopy.* For a partially enclosed lifeboat, the foldable canopy cloth material must meet the specifications for Type II, Class 1 requirements of A–A–55308 (incorporated by reference, see § 160.135–5), or be accepted by the Commandant as equivalent or superior.

(29) *Labels and notices.* Any labels, caution and danger notices, and operating, maintenance, or general instructions, must be in accordance with ASTM F 1166, Section 15, in terms of format, content, lettering size and spacing, color, and posted location. They must be illustrated with symbols in accordance with IMO Res. A.760(18) (incorporated by reference, see § 160.135–5), as applicable. Information and instruction plates, not specifically mentioned in this section, must not be posted in the vicinity of the control and steering station without prior approval from the Commandant. Identification label plates, if required, must be posted on or above the component or equipment to be identified.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

§ 160.135–9 Preapproval review.

(a) Except as provided in paragraph (c) of this section, the Commandant must conduct the preapproval review, required by this section, in accordance with 46 CFR 159.005–5.

(b) *Manufacturer requirements.* To seek Coast Guard approval of a lifeboat, the manufacturer must submit an application to the Commandant meeting the requirements of 46 CFR 159.005–5 for preapproval review. To meet the requirements of 46 CFR 159.005–5(a)(2), the manufacturer must submit in triplicate—

(1) A list of drawings, specifications, manuals, and any other documentation submitted, with each document identified by number, title, revision issue, and date;

(2) General arrangement and assembly drawings, including principal dimensions;

(3) Seating arrangement plan, including a dimensioned seat form to scale;

(4) A complete material list, with each material referenced to a U.S. national standard or, if a copy is provided in English, an equivalent international standard;

(5) Plans for carriage and, in detail, stowage of equipment;

(6) Hull, canopy, and critical parts lay-up schedule for a Fiber Reinforced Plastic (FRP) lifeboat;

(7) Hull and canopy construction drawings, including particulars of joints, welds, seams, and other fabricating details;

(8) Weights and thickness of each major FRP structural component, including the hull, canopy, and inner liners, before outfitting;

(9) Specification and identification of materials such as steel, aluminum, resin, foam, fiberglass, cloth, and plastic used in the lifeboat's manufacture;

(10) Fabrication details for each major structural component, including details of each welded joint;

(11) Lines plans;

(12) Propulsion system specifications and arrangement and installation drawings;

(13) Steering system drawings and specifications;

(14) Release mechanism installation drawings and the mechanism's Coast Guard approval number;

(15) Air and water spray systems drawings and specifications, if installed;

(16) Plans for critical subassemblies;

(17) Hydraulic systems drawings and specifications, if installed;

(18) Electrical system schematics and specifications;

(19) Stability data, including righting arm curves in the light and loaded condition for both intact and flooded stability;

(20) Drawings of all signs and placards, showing actual inscription, format, color, size, and location on the lifeboat;

(21) Complete data pertinent to the installation and use of the proposed lifeboat, including the light load (condition A) and full load (condition B) weights;

(22) Specifications for the required launching ramp length and angle, and the height of free-fall lifeboat installation above the water;

(23) An operation, maintenance, and training manual as described in §§ 160.135–19 and 160.135–21 of this subpart;

(24) A description of the quality control procedures and record keeping that will apply to the production of the lifeboat, which must include but is not limited to—

(i) The system for checking material certifications received from suppliers;

(ii) The method for controlling the inventory of materials;

(iii) The method for checking quality of fabrication, seams, and joints, including welding inspection procedures; and

(iv) The inspection checklists used during various stages of fabrication to assure that the approved lifeboat complies with the approved plans and the requirements of this subpart;

(25) Full details of any other unique capability;

(26) Any other drawing(s) necessary to show that the lifeboat complies with the requirements of this subpart;

(27) The location or address of all manufacturing sites, including the name and address of any subcontractors, where the lifeboat will be constructed; and

(28) The name of the independent laboratory that will perform the duties prescribed in §§ 160.135–11 and 160.135–15 of this subpart.

(c) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may conduct preapproval review required by this section so long as the preapproval review is conducted in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(d) *Plan quality.* The plans and specifications submitted to the Commandant under this section must—

(1) Be provided in English, including all notes, inscriptions, and designations for configuration control;

(2) Address each of the applicable items in paragraph (b) of this section in sufficient detail to show that the lifeboat meets the construction requirements of this subpart;

(3) Accurately depict the proposed lifeboat;

(4) Be internally consistent;

(5) Be legible; and

(6) If reviewed by an independent laboratory under paragraph (c) of this section, include the independent laboratory's attestation that the plans meet the quality requirements of this section.

(e) *Alternatives.* Alternatives in materials, parts, or construction, and each item replaced by an alternative, must be clearly indicated as such in the plans and specifications submitted to the Commandant under this section.

(f) *Coast Guard review.* If the plans or specifications do not comply with the requirements of this section, Coast Guard review may be suspended, and the applicant notified accordingly.

§ 160.135–11 Fabrication of prototype lifeboats for approval.

(a) If the manufacturer is notified that the information submitted in accordance with § 160.135–9 of this subpart is satisfactory to the Commandant, the manufacturer may proceed with fabrication of the prototype lifeboat as set forth in this section.

(b) Unless the Commandant directs otherwise, an independent laboratory must conduct inspections, tests, and oversight required by this section. Prototype inspections and tests of a lifeboat must be carried out in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007 and in this section, unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional prototype tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(c) Fabrication of a lifeboat must proceed in the following sequence:

(1) The manufacturer must arrange for an independent laboratory (or Coast Guard inspector if required under paragraph (b) of this section) to inspect, test, and oversee the lifeboat during its fabrication and prepare an inspection and test report meeting the requirements of 46 CFR 159.005–11.

(2) The independent laboratory must make such inspections as are necessary to determine that the prototype is constructed by the methods and with the materials specified in the plans reviewed under § 160.135–9 of this subpart. By conducting at least one inspection during its construction, the independent laboratory must determine the prototype lifeboat conforms with those plans by inspecting—

(i) *Fiber Reinforced Plastic (FRP) Construction.*

(A) FRP components of each prototype lifeboat must have a layup made of unpigmented clear resins so that details of construction are visible for inspection. Test panels representative of each prototype layup must be tested in accordance with MIL–P–17549D(SH) (incorporated by reference, see § 160.135–5). If an accepted MIL–R–21607E(SH) Grade B resin is used for the prototype lifeboat, additives for fire retardancy must not be used so that the laminate is translucent for inspection purposes. Any prototype test lifeboat with Grade B resins will not be marked in accordance with § 160.135–17 of this subpart for use as a production lifeboat regardless of the outcome of the performance tests. Whichever accepted resin the manufacturer decides to use for the prototype lifeboat, the same resin must be used in the production lifeboats.

(B) The hull, canopy, and major structural laminates of each prototype FRP lifeboat must be tested for resin content, ultimate flexural strength, and tensile strength. The test samples must be cut out from the prototype lifeboat, or be laid up at the same time, using the same procedures and by the same operators as the laminate used in the lifeboat. The number of samples used for each test, and the conditions and test methods used, must be as per the applicable test specified in this paragraph. The resin content must be determined as per ASTM D 2584 or ISO 1172 (incorporated by reference, see § 160.135–5). The flexural ultimate strength must be determined by ASTM D 790 method I (test condition "A", flatwise, dry) or the corresponding ISO 14125 test method (incorporated by reference, see § 160.135–5). The tensile strength, lengthwise, must be determined as per ASTM D 638 or ISO 527 (incorporated by reference, see § 160.135–5).

(C) Each major FRP component, such as the hull, canopy, and inner liner(s), of each prototype FRP lifeboat must be examined and weighed after it is completed but before it is assembled. If the lifeboat is constructed by the spray lay-up technique, the hull and canopy thicknesses must be measured using ultrasonic or equivalent techniques;

(ii) *Steel construction.* Steel sheet and plate used for the hull, floors, and other structural components of a prototype steel lifeboat must meet the bend tests requirement specified under ASTM A 653 (incorporated by reference, see § 160.135–5) after galvanizing or other anti-corrosion treatment has been applied. This may be demonstrated through a supplier's certification papers or through witnessing actual tests.

(iii) *Coated cloth for partially enclosed lifeboats.* Cloth material used in the construction of each prototype lifeboat must be confirmed to have met the requirements specified under § 160.135–7(b)(28) of this subpart. This may be demonstrated through a supplier's certification papers or through witnessing actual tests.

(iv) *Welding.* Structural components of each prototype lifeboat joined by welding must be welded by the welding procedures and materials as per the plans reviewed under § 160.135–9 of this subpart and by welders appropriately qualified.

(v) *Buoyancy foam.* Each major subassembly of a prototype lifeboat, such as the hull with liner and canopy with liner, must be weighed after the buoyancy foam is installed and before it is further assembled.

(vi) Installation of the propulsion system.

(vii) Installation of the steering system.

(viii) Installation of the water spray fire-protection and air support system(s), if fitted.

(3) The independent laboratory must submit the inspection report to the Commandant.

§ 160.135–13 Approval inspections and tests for prototype lifeboats.

(a) After the Commandant notifies the manufacturer that the prototype lifeboat is in compliance with the requirements of § 160.135–11 of this subpart, the manufacturer may proceed with the prototype approval inspections and tests required under this section. The prototype lifeboat, the construction of which was witnessed under § 160.135–11 of this subpart, must be used for the tests in this section.

(b) Except as provided in paragraph (f) of this section, the Coast Guard must conduct the approval inspections and witness the approval tests required under this section.

(c) *Manufacturer requirements.* To proceed with approval inspections and tests required by this section, the manufacturer must—

(1) Notify the Commandant and cognizant Officer in Charge, Marine Inspection (OCMI) of where the approval inspections and tests required under this section will take place, and such notification must be in sufficient time to allow making travel arrangements;

(2) Arrange a testing schedule that allows for a Coast Guard inspector to travel to the site where the testing is to be performed;

(3) Admit the Coast Guard inspector to any place where work or testing is performed on lifeboats or their component parts and materials for the purpose of—

(i) Conducting inspections as necessary to determine that the prototype is constructed by the methods and with the materials specified in the plans reviewed under § 160.135–9 of this subpart and the inspection report under § 160.135–11 of this subpart;

(ii) Assuring that the quality assurance program of the manufacturer is satisfactory;

(iii) Witnessing tests; and

(iv) Taking samples of parts or materials for additional inspections or test; and

(4) Make available to the Coast Guard inspector the affidavits or invoices from the suppliers of all essential materials used in the production of lifeboats, together with records identifying the lot or serial numbers of the lifeboats in which such materials were used.

(d) *Tests*—(1) *Prototype lifeboat readiness.* All tests must be conducted on a completely outfitted lifeboat, including fixed equipment such as compass, searchlight, and navigating lights. Loose equipment may be substituted by weights.

(2) *Fiber Reinforced Plastic (FRP) prototype lifeboat lay-up.* For the prototype of each design of an FRP lifeboat, the lay-up must be made of unpigmented resins and clear gel coat.

(3) *Fuel tank.* Each non-portable fuel tank must be tested by a static head above the tank top of 3 m (10 ft) of water without showing any leaks or signs of permanent distortion.

(4) *IMO Revised recommendation on testing.* Each prototype lifeboat of each design must pass each of the tests for davit-launched or free-fall lifeboats, as applicable, described in the IMO Revised recommendation on testing, Part 1, paragraphs 6.1 through 6.17 (incorporated by reference, see § 160.135–5). Tests must be conducted in accordance with these paragraphs of IMO Revised recommendation on testing, Part 1, with the following modifications:

(i) *Fire retardancy/release mechanism and engine tests* (Paragraphs 1/6.2, 6.9, 6.10, 6.14). The tests in the following IMO Revised recommendation on testing paragraphs may be accomplished independent of the lifeboat, and may be considered completed and need not be repeated if the tests have been previously shown to meet the necessary requirements—

(A) Paragraph 6.2;

(B) Paragraphs 6.9.3 through 6.9.6;

(C) Paragraph 6.10.2 through 6.10.6; and

(D) Paragraphs 6.14.6 through 6.14.8.

(ii) *Lifeboat overload test* (Paragraph 1/6.3). For a davit launched lifeboat, the overload test must be conducted with the lifeboat suspended from the lifting hooks. During this test, the canopy of a free-fall lifeboat must not deform so as to harm any potential occupants.

(iii) *Impact test* (Paragraph 1/6.4). The rigid vertical surface must not be displaced or deformed as a result of the test.

(iv) *Lifeboat seating space test* (Paragraph 1/6.7). The average mass of persons used to test the lifeboat seating space must be determined by weighing as a group or individually. Each person must wear an inherently buoyant SOLAS lifejacket with at least 150 N of buoyancy or a Coast Guard-approved lifejacket approved under approval series 160.155. For other than a totally enclosed lifeboat, the operator(s) must demonstrate that the lifeboat can be operated while wearing a Coast Guard approved, insulated-buoyant immersion suit approved under approval series 160.171. The Commandant will give consideration to requests to test at, and designate lifeboats for, a heavier occupant weight than that stated in the IMO LSA Code, Chapter IV (incorporated by reference, § 160.135–5).

(v) *Flooded stability test* (Paragraph 1/6.8). Any materials used to raise the test weights representing the lifeboat occupants above the seat pan must be at least as dense as fresh water.

(vi) *Lifeboat operational test, Operation of engine* (Paragraph 1/6.10.1). For the 4-hour lifeboat maneuvering period, the lifeboat must not (except for a short period to measure towing force and to demonstrate towing fixture durability) be secured, and must be run through its full range of speeds and full range of all controls throughout the period.

(vii) *Survival recovery test* (Paragraph 1/6.10.8). The recovery demonstration must show that no more than two crewmembers are required to recover a helpless person of ninety-fifth percentile by weight described in ASTM F 1166 (incorporated by reference, see § 160.135–5) while the crewmembers and helpless person are each wearing a lifejacket.

(viii) *Flooded capsizing test* (Paragraph 1/6.14.3–.5). For any lifeboat also approved as a rescue lifeboat, the lifeboat must return to an upright position and, without undue delay, the crew must be able to use the lifeboat again as a lifeboat.

(ix) *Fire test* (Paragraph 1/6.16.4). The locations where temperatures are measured along with the rationale for the proposed locations must be provided to the Commandant for approval prior to the testing.

(x) *Water spray tests* (Paragraph 1/6.16.9). The delivery rate of water, or the sprayed water film thickness over the lifeboat, must be at least equivalent to that used to achieve passing results for the fire test. Full coverage must be obtained without the need to rock the lifeboat or induce wetting by wiping or applying any agent.

(xi) *Measuring and evaluating acceleration forces* (Paragraph 1/6.17.5). For free-fall lifeboats, the selection, placement, and mounting of the accelerometers along with the rationale for the proposed selection, placement, and mounting must be provided to the Commandant for approval prior to the testing.

(xii) *Evaluation acceleration forces with the dynamic response model* (Paragraph 1/6.17.9). For free-fall lifeboats only, sections 6.17.9 thru 6.17.12 must be used along with the displacement limits for lifeboats in Table 2 under "Evaluation with the dynamic response model".

(5) *Visual inspection.* Each lifeboat must be visually inspected to confirm—

(i) Compliance with this subpart;

(ii) Conformance with plans reviewed under § 160.135–9 of this subpart; and

(iii) Ease of operation and maintenance.

(e) *Test waiver.* The Commandant may waive certain tests for a lifeboat identical in construction to smaller and larger lifeboats that have successfully completed the tests. Tests associated with lifeboat components that have already been approved by the Commandant are not required to be repeated.

(f) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may perform approval inspections and witness approval tests required by this section so long as the inspections and tests are performed and witnessed in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(g) After completion of approval inspections and tests required by this section, the manufacturer must comply with the requirements of 46 CFR 159.005–9(a)(5) by preparing and submitting to the Commandant for review—

(1) The prototype approval test report containing the same information recommended by IMO MSC Circ. 980 (incorporated by reference, *see* § 160.135–5). The report must include a signed statement by the Coast Guard inspector (or independent laboratory as permitted by paragraph (f) of this section) who witnessed the testing, indicating that the report accurately describes the testing and its results; and

(2) The final plans of the lifeboat as built. The plans must include, in triplicate—

(i) The instructions for training and maintenance described in §§ 160.135–19 and 160.135–21 of this subpart; and

(ii) The final version of the plans required under § 160.135–9 of this subpart.

(h) The Commandant will review the report and plans submitted under paragraph (g) of this section, and if satisfactory to the Commandant, will approve the plans under 46 CFR 159.005–13.

§ 160.135–15 Production inspections, tests, quality control, and conformance of lifeboats.

(a) Unless the Commandant directs otherwise, an independent laboratory must conduct or witness inspections, tests, and oversight required by this section. Production inspections and tests of lifeboats must be carried out in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007 and in this section, unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(b) *Manufacturer's responsibility.* The manufacturer must—

(1) Institute a quality control procedure to ensure that all production lifeboats are produced to the same standard, and in the same manner, as the prototype lifeboat approved by the Commandant. The manufacturer's quality control personnel must not work directly under the department or person responsible for either production or sales;

(2) Schedule and coordinate with the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) to ensure that all tests are performed as described in this section;

(3) Submit to the Commandant, a yearly report that contains the following—

(i) Serial number and date of final assembly of each lifeboat constructed;

(ii) Name of the representative of the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section); and

(iii) Name of the vessel and company receiving the lifeboat, if known;

(4) Ensure that the arrangement and materials entering into the construction of the lifeboat are in accordance with plans approved under § 160.135–13(h) of this subpart;

(5) Allow an independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) access to any place where materials are stored for the lifeboat, work or testing is performed on lifeboats or their component parts and materials, or records are retained to meet the requirements of paragraph (c) below, for the purpose of—

(i) Assuring that the quality control program of the manufacturer is satisfactory;

(ii) Witnessing tests; or

(iii) Taking samples of parts or materials for additional inspections or tests; and

(6) Ensure that the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) conducts the inspections and witnesses the tests required by paragraph (e)(2) of this section, and further conducts a visual inspection to verify that the lifeboats are being made in accordance with the plans approved under § 160.135–13(h) of this subpart and the requirements of this subpart.

(c) *Recordkeeping.* The manufacturer must maintain records in accordance with 46 CFR 159.007–13. The manufacturer must keep records of all items listed in this section for at least 5 years from the date of termination of approval of each lifeboat. The records must include—

(1) A copy of this subpart, other CFR sections referenced in this subpart, and each applicable document listed in § 160.135–5 of this subpart;

(2) A copy of approved plans, documentation, and certifications;

(3) A current certificate of approval for each approved lifeboat;

(4) Affidavits, certificates, or invoices from the suppliers identifying all essential materials used in the production of approved lifeboats, together with records identifying the serial numbers of the lifeboats in which such materials were used;

(5) Start and finish date and time of the lay-up of each major Fiber Reinforced Plastic (FRP) component such as the hull, canopy, and inner liner and the names of the operator(s);

(6) Start and finish date and time of pouring of foam-in-place rigid buoyancy foam, and name of operator(s);

(7) Records of all structural welding and name of operator(s);

(8) Records of welder certificates, training and qualifications;

(9) Date and results of calibration of test equipment and the name and address of the company or agency that performed the calibration;

(10) The serial number of each production lifeboat, along with records of its inspections and tests carried out under this section; and

(11) The original purchaser of each lifeboat and the vessel on which it was installed, if known.

(d) *Independent laboratory responsibility.* The independent laboratory must perform or witness the inspections and tests under paragraph (e)(2) of this section for each Coast Guard-approved lifeboat to be installed on a U.S.-flagged vessel. If the manufacturer also produces lifeboats for approval by other maritime safety administrations, the inspections may be coordinated with inspection visits for those administrations.

(e) *Production inspections and tests.* Each approved lifeboat must be inspected and tested in accordance with each of the following procedures:

(1) *In-process inspections and tests.* Each production lifeboat must be examined during lay-up of the hull to verify that the lay-up conforms to the approved drawings. Each FRP major component, such as the hull, canopy, and inner liner, must be examined and weighed after it is completed but before assembled. If the lifeboat is constructed by the spray lay-up technique, the hull and canopy thicknesses must be measured using ultrasonic or equivalent techniques. Laboratory tests of laminates must be conducted at this time. Test samples must be cut out from the lifeboat itself or be laid up at the same time, using the same procedures and by the same operators as the laminate used in the lifeboat. The number of samples used for each test, and the conditions and test methods used, must be as described in the applicable test specified in this paragraph.

(i) *Weight.* The weight of each FRP section, such as hull, canopy, and inner liner, must be within 10 percent of similar sections of the prototype lifeboat. These weights must be the bare laminate weights. Backing plates that are molded into the laminate may be included.

(ii) *Thickness.* The average thickness of each section of sprayed-up laminate must be within 20 percent of the corresponding sections of the prototype.

(iii) *Resin content.* Laminate samples from the hull, canopy, and inner liners must be tested in accordance with ASTM D 2584 or ISO 1172 (incorporated by reference, see § 160.135–5). The resin content must be within 8 percentage points of the prototype results. If the resin content does not comply, flexural ultimate strength and tensile tests in paragraph (e)(1)(iv) of this section must be conducted.

(iv) *Flexural ultimate strength and tensile tests.* Each laminate sample from each major component, such as hull and liner, that does not comply with the resin content requirement in paragraph (e)(1)(iii) of this section, and from each component of every fifth production lifeboat, must be subjected to the flexural ultimate strength and tensile strength tests as described in § 160.135–13(c)(2)(i)(B) of this subpart. The values must be at least 90 percent of the prototype results.

(v) *Buoyancy material.* If block foam buoyancy material is used, each piece must be weighed after it is cut and shaped to make sure that the correct amount of foam is installed. If foamed-in-place buoyancy material is used, a separate sample of the foam must be poured, and used to make a density determination after it has set. The density must be 32 +/− 8 kg/m^3 (2 +/− 0.5 lb/ft^3).

(vi) *Steel sheet and plate.* Steel sheet and plate for the hull, floors, and other structural components must meet ASTM A 36 and ASTM A 653 as applicable (incorporated by reference, see § 160.135–5). Non-corrosive resistant steel must meet the coating mass and bend tests requirement specified under ASTM A 653. Compliance for this paragraph can be ascertained through supplier's certification papers or through conducting actual tests.

(vii) *Cloth.* The cloth material used for the construction of each partially enclosed lifeboat must meet the material specification of A–A 55308 (incorporated by reference, see § 160.135–5). This compliance can be ascertained through supplier's certification papers or through witnessing actual tests.

(viii) *Fuel tank.* Each fuel tank must be tested by a static head above the tank top of 3 m (10 ft) of water without showing any leaks or signs of permanent distortion.

(ix) *Welding.* It must be determined that structural components joined by welding was performed by welders who are appropriately qualified and that the welding procedure and materials are as per the plans approved under § 160.135–13(h) of this subpart.

(2) *Post assembly tests and inspections.* The finished lifeboat must be visually inspected inside and out. The manufacturer must develop and maintain a visual inspection checklist designed to ensure that all applicable requirements have been met and the lifeboat is equipped in accordance with approved plans. At a minimum, each lifeboat must be operated for 2 hours during which all lifeboat systems must be exercised.

§ 160.135–17 Marking and labeling.

(a) Each lifeboat must be marked with a plate or label permanently affixed to the hull in a conspicuous place readily accessible for inspection and sufficiently durable to withstand continuous exposure to environmental conditions at sea for the life of the lifeboat.

(b) The plate or label must be in English, but may also be in other languages.

(c) The plate or label must contain the—

(1) Name and address of the manufacturer;

(2) Manufacturer's model identification;

(3) Name of the independent laboratory that witnessed the prototype or production test and inspections;

(4) Serial number of the lifeboat;

(5) U.S. Coast Guard approval number;

(6) Month and year of manufacture;

(7) Material of hull construction;

(8) Number of persons for which the lifeboat is approved;

(9) Light load and full load (condition A and condition B weight); and

(10) Word "SOLAS."

§ 160.135–19 Operating instructions and information for the ship's training manual.

(a) Each lifeboat must have instructions and information for the ship's training manual that use the symbols from IMO Res. A.760(18) (incorporated by reference, see § 160.135–5) to describe the location and operation of the lifeboat.

(b) The instructions and information required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their launching systems.

(c) The lifeboat manufacturer must make the instructions and information required by paragraph (a) of this section available—

(1) In English to purchasers of a lifeboat approved by the Coast Guard; and

(2) In the form of an instruction placard providing simple procedures and illustrations for operation of the lifeboat. The placard must be not greater than 36 cm (14 in) by 51 cm (20 in), and must be made of durable material and suitable for display near installations of lifeboats on vessels.

§ 160.135–21 Operation and maintenance instructions.

(a) Each lifeboat must have operation and maintenance instructions that—

(1) Follows the general format and content specified in MSC.1 Circ. 1205 (incorporated by reference, see § 160.135–5); and

(2) Includes a checklist for use in monthly, external visual inspections of the lifeboat.

(b) The lifeboat manufacturer must make the manual required by paragraph (a) of this section available in English to purchasers of a lifeboat approved by the Coast Guard.

(c) The operation and maintenance instructions required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their launching systems.

§ 160.135–23 Procedure for approval of design, material, or construction change.

(a) Each change in design, material, or construction from the plans approved under 46 CFR 159.005–13 and § 160.135–13(h) of this subpart must be approved by the Commandant before being used in any production lifeboat. The manufacturer must submit any such change following the procedures in § 160.135–9 of this subpart, but documentation on items that are unchanged from the plans approved under 46 CFR 159.005–13 and § 160.135–13(h) of this subpart need not be resubmitted.

(b) Unless determined by the Commandant to be unnecessary, a prototype lifeboat with each change described in paragraph (a) of this section must be made and tested according to the procedures for new approvals in §§ 160.135–9 through 160.135–13 of this subpart.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

Subpart 160.151—Inflatable Liferafts (SOLAS)

29. Revise § 160.151–1 to read as follows:

§ 160.151–1 Scope.

This subpart prescribes standards, tests, and procedures for approval by the Coast Guard of inflatable liferafts. This subpart does not apply to any inflatable liferaft approved by the Commandant before (EFFECTIVE DATE OF FINAL RULE), so long as the liferaft satisfies the annual servicing requirements set forth in 46 CFR 160.151–57.

30. In § 160.151–3—

a. In the definition for "Commandant", remove the text "(CG–512)" and add, in its place, the text "(CG–5214)"; and

b. Add, in alphabetical order, the definition for "Officer in Charge, Marine Inspection (OCMI)", to read as follows:

§ 160.151–3 Definitions.

* * * * *

Officer in Charge, Marine Inspection (OCMI) means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations. The "cognizant OCMI" is the OCMI who has immediate jurisdiction over a vessel for the purpose of performing the duties previously described.

* * * * *

31. Revise § 160.151–5 to read as follows:

§ 160.151–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428–2959.

(1) ASTM F 1014–02(2007), Standard Specification for Flashlights on Vessels, IBR approved for § 160–151–21 ("ASTM F 1014").

(2) [Reserved]

(c) General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 22200 Crystal Drive, 11th Floor, Arlington, VA 22202, 703–605–5400.

(1) Federal Standard 595C—Colors Used in Government Procurement, IBR approved for §§ 160.151–15 and 160.151–17 ("FED–STD–595C").

(2) [Reserved]

(d) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution A.657(16), Instructions for Action in Survival Craft, October 1989, IBR approved for § 160.151–21 ("IMO Res. A.657(16)").

(2) IMO Resolution A.658(16), Use and Fitting of Retro-reflective Materials on Life-saving Appliances, IBR approved for § 160.151–15 ("IMO Res. A.658(16)").

(3) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for §§ 160.151–7, 160.151–15, 160.151–17, 160.151–21, 160.151–29, 160.151–33, 160.151–59, and 160.151–61 ("IMO LSA Code").

(4) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for §§ 160.151–21, 160.151–27, 160.151–29, 160.151–31, and 160.151–57 ("IMO Revised recommendation on testing").

(e) International Standards Organization ISO Copyright Office, Case Postale 56, CH 1211 Geneva 20.

(1) ISO 15738:2002 Ships and marine technology—Gas inflation systems for inflatable life-saving appliances, IBR approved for § 160.151–27 ("ISO 15738").

(2) ISO 17339:2002 Ships and marine technology—Sea anchors for survival craft and rescue boats, IBR approved for § 160.151–21 ("ISO 17339").

(3) ISO 18813:2006 Ships and marine technology—Survival equipment for

survival craft and rescue boats, IBR approved for § 160.151–21 ("ISO 18813").

(f) Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robins Avenue, Philadelphia PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*.

(1) MIL–C–17415E—Cloth, Coated, and Webbing, Inflatable Boat and Miscellaneous Use, IBR approved for § 160.151–15 ("MIL–C–17415E").

(2) [Reserved]

32. In § 160.151–7—

a. In the introductory text, after the words "Chapter III of SOLAS", add the words "and the IMO LSA Code (incorporated by reference, see § 160.151–5)"; and after the words "provisions of", remove the word "SOLAS" and add, in its place, the words "the IMO LSA Code:";

b. Revise paragraphs (a) and (b) to read as set forth below; and

c. Remove paragraphs (c), (d), and (e).

§ 160.151–7 Construction of inflatable liferafts.

* * * * *

(a) IMO LSA Code 1.2, General requirements for life-saving appliances; and

(b) IMO LSA Code 4.2, Inflatable liferafts.

§ 160.151–11 [Amended]

33. In § 160.151–11(b) introductory text, after the words "must submit an application", add the words "to the Commandant".

34. In § 160.151–15—

a. In the introductory text, remove the words "indicated in § 160.151–7" and add, in their place, the words "and the IMO LSA Code (incorporated by reference, see § 160.151–5)";

b. In paragraph (a) introductory text, remove the words "Regulation III/30.2.1" and add, in their place, the words "IMO LSA Code, Chapter I/1.2.1"; after the words "meeting MIL–C–17415E", add the words "(incorporated by reference, see § 160.151–5)"; after the words "equivalent or superior" remove the symbol "-"and add, in its place, the words "and be capable of withstanding the prototype tests specified in 160.151–27 of this subchapter.";

c. Remove paragraphs (a)(1), (a)(2), (a)(3), and (a)(4);

d. In paragraph (b), remove the words "Regulation III/30.2.1" and add, in their place, the words "IMO LSA Code, Chapter I/1.2.2.1";

e. In paragraph (c), remove the words "Regulation III/30.2.1" and add, in their place, the words "IMO LSA Code Chapter I/1.2.2.1";

f. In paragraph (d), remove the words "Regulation III/30.2.4" and add, in their place, the words "IMO LSA Code, Chapter I/1.2.2.4";

g. In paragraph (e), remove the words "Regulation III/30.2.6" and add, in their place, the words "IMO LSA Code, Chapter I/1.2.2.6"; and remove the words "(color number 34 of NBS Special Publication 440)" and add, in their place, the words "(color number 12197 of FED–STD–595C (incorporated by reference, see § 160.151–5))";

h. In paragraph (f), remove the words "Regulation III/30.2.7" and add, in their place, the words "IMO LSA Code, Chapter I/1.2.2.7"; and remove the words "IMO Resolution A.658(16)" and add, in their place, the words " IMO Res. A.658(16) (incorporated by reference, see § 160.151–5)";

i. In paragraph (g), remove the words "Regulation III/38.1.4" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.1.4";

j. In paragraph (h), remove the words "Regulation III/38.2.2" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.2.2";

k. In paragraph (i), remove the words "Regulation III/38.3.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.3.1";

l. Remove and reserve paragraph (j);

m. In paragraph (k), remove the words "Regulation III/38.6.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.6.1";

n. In paragraph (l) introductory text, remove the words "Regulation III/39.2.3" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.2.3";

o. Redesignate paragraphs (m), (n), and (o) as paragraphs (n), (o), and (p) respectively.

p. Add paragraph (m) to read as set out below;

q. In newly redesignated paragraph (n), remove the words "Regulation III/39.4.2" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.4.2";

r. In newly redesignated paragraph (o), remove the words "Regulation III/39.6.2" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.3.3"; after the word "exterior", add the words "and interior"; and remove the word "lamp" and add, in its place, the word "lamps"; and

s. In newly redesignated paragraph (p) introductory text, remove the words "Regulation III/39.7.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.6.1".

§ 160.151–15 Design and performance of inflatable liferafts.

* * * * *

(m) *Inflation systems (IMO LSA Code, Chapter IV/4.2.2.3).* Gas inflation systems, including gas-cylinder valves; gas-cylinder operating heads; high-pressure hose assemblies; and pressure relief, inflation/deflation, and non-return/transfer valves; must be certified as complying with the requirements of ISO 15738 (incorporated by reference, see § 160.151–5).

* * * * *

§ 160.151–17 [Amended]

35. In 160.151–17—

a. In the introductory text, after the words "regulations of SOLAS", add the words "and IMO LSA Code (incorporated by reference, see § 160.151–5)";

b. In paragraph (a), remove the words "Regulation III/39.5.1" and add, in their place, the words "the IMO LSA Code, Chapter IV/4.2.5";

c. In paragraph (a)(2)(vii), remove the words "(color number 34 of NBS Special Publication 440)" and add, in their place, the words "(color number 12197 of FED–STD–595C (incorporated by reference, see § 160.151–5))";

d. In paragraph (b), remove the words "Regulation III/39.4.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.4.1"; and

e. Remove and reserve paragraph (c).

36. In § 160.151–21—

a. In the introductory text, after the words "regulations of SOLAS", add the words "and the IMO LSA Code (incorporated by reference, see § 160.151–5)";

b. In paragraph (a), remove the first instance of the words "Regulation III/38.5.1.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.1"; and after the words "buoyant heaving line", remove the words "described by Regulation III/38.5.1.1";

c. In paragraph (b), remove the first instance of the words "Regulation III/38.5.1.2" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.2"; and after the words "folding knife", remove the words "carried as permitted by Regulation III/38.5.1.2";

d. In paragraph (c), remove the first instance of the words "Regulation III/38.5.1.3" and add, in their place, the words "(IMO LSA Code, Chapter IV/4.1.5.1.3 and ISO 18813 (incorporated by reference, see § 160.151–5))"; and after the words "Each bailer", remove the words "described by Regulation III/38.5.1.3";

e. In paragraph (d), remove the first instance of the words "Regulation III/38.5.1.4" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.4"; and after the words "Each sponge", remove the words "described by Regulation III/38.5.1.4";

f. In paragraph (e), remove the first instance of the words "Regulation III/38.5.1.5" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.5 and ISO 17339 (incorporated by reference, see § 160.151–5)"; remove the two instances of the words "described by Regulation III/38.5.1.5"; and after the words "hauled in by one person.", add the sentence "Sea anchors must be attached to the raft at a position so as to orient the primary entrance away from the seas as far as practicable while still allowing the sea anchor to be retrieved by a person inside the raft.";

g. In paragraph (f), remove the words "Regulation III/38.5.1.6" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.6 and ISO 18813"; and remove the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing (incorporated by reference, see § 160.151–5).";

h. In paragraph (g), remove the first instance of the words "Regulation III/38.5.1.7" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.7 and ISO 18813"; and after the words "a tin-opener", remove the words "described by Regulation III/38.5.1.7";

i. In paragraph (h), remove the first instance of the words "Regulation III/38.5.1.8" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.8"; and after the words "Each first-aid kit", remove the words "described by Regulation III/38.5.1.8";

j. In paragraph (i), remove the first instance of the words "Regulation III/38.5.1.9" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.9 and ISO 18813"; and after the words "The whistle", remove the words "described by Regulation III/38.5.1.9";

k. In paragraph (j), remove the first instance of the words "Regulation III/38.5.1.10" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.10"; and after the words "Each rocket parachute flare", remove the words "described by Regulation III/38.5.1.10";

l. In paragraph (k), remove the first instance of the words "Regulation III/38.5.1.11" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.11"; and after the words "Each hand flare", remove the words "described by Regulation III/38.5.1.11";

m. In paragraph (l), remove the first instance of the words "Regulation III/38.5.1.12" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.12"; and after the words "Each buoyant smoke signal", remove the words "described by Regulation III/38.5.1.12";

n. In paragraph (m), remove the first instance of the words "Regulation III/38.5.1.13" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.13"; after the words "The waterproof electric torch", remove the words "described by Regulation III/38.5.1.13"; and after the words "see § 160.151–5", add the symbol ")";

o. In paragraph (n), remove the words "Regulation III/38.5.1.14" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.14";

p. In paragraph (o), remove the first instance of the words "Regulation III/38.5.1.15" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.15"; and after the words "Each signalling mirror" remove the words "described by Regulation III/38.5.1.15";

q. In paragraph (p), remove the first instance of the words "Regulation III/38.5.1.16" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.16"; and after the words "transparent waterproof container", remove the words "as described by Regulation III/38.5.1.16";

r. In paragraph (q), remove the words "Regulation III/38.5.1.17" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.17";

s. In paragraph (r), remove the words "Regulation III/38.5.1.18." and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.18";

t. In paragraph (s), remove the first instance of the words "Regulation III/38.5.1.19" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.19"; remove the words "The fresh water required by Regulation III/38.5.1.19 must be "emergency drinking water"" and add, in their place, the words "Emergency drinking water must be"; after the words "The desalting apparatus", remove the words "described in Regulation III/38.5.1.19"; and remove the last sentence of the paragraph;

u. In paragraph (t), remove the first instance of the words "Regulation III/38.5.1.20" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.20 and ISO 18813"; and after the words "The drinking cup", remove the words "described in Regulation III/38.5.1.20";

v. In paragraph (u), remove the first instance of the words "Regulation III/38.5.1.21" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.21 and ISO 18813"; and after the words "The anti-seasickness medicine", remove the words "required by Regulation III/38.5.1.21";

w. In paragraph (v), remove the first instance of the words "Regulation III/38.5.1.22" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.22 and ISO 18813"; and after the words "The instructions", remove the words "required by Regulation III/38.5.1.22";

x. In paragraph (v)(3), remove the words "IMO Resolution A.657(16)" and add, in their place, the words "IMO Res. A.657(16) (incorporated by reference, see § 160.151–5)";

y. In paragraph (w), remove the words "Regulation III/38.5.1.23" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.23";

z. In paragraph (w)(3), remove the words "IMO Resolution A.657(16)" and add, in their place, the words "IMO Res. A.657(16)";

aa. In paragraph (x), remove the first instance of the words "Regulation III/38.5.1.24" and add, in their place, the words "IMO LSA Code, Chapter IV/4.1.5.1.24"; and after the words "Each thermal protective aid", remove the words "described by Regulation III/38.5.1.24";

bb. In paragraph (y), remove the first instance of the words "Regulation III/39.10.1.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.9.1.1 and ISO 18813"; and after the words "The repair outfit", remove the words "required by Regulation III/39.10.1.1";

cc. Revise paragraph (y)(2) to read as set out below;

dd. In paragraph (y)(3), remove the text "; and" and add, in its place, the symbol ".";

ee. Remove paragraph (y)(4); and

ff. In paragraph (z), remove the first instance of the words "Regulation III/39.10.1.2" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.9.1.2"; and after the words "The pump or bellows", remove the words "required by Regulation III/39.10.1.2".

§ 160.151–21 Equipment required for SOLAS A and SOLAS B inflatable liferafts.

* * * * *

(y) * * *

(2) Five or more tube patches at least 50 mm (2 in) in diameter (the Commandant will consider self-adhesive patches per ISO 18813 as an alternative); and

* * * * *

§ 160.151–27 [Amended]

37. In § 160.151–27—

a. Remove each instance of the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing";

b. In paragraph (a), remove the word "inclusive"; and

c. In paragraph (c)(5), remove the word "liters" and add, in its place, the text "L".

§ 160.151–29 [Amended]

38. In § 160.151–29, in the introductory text, remove the words "Regulation III/39.5.1" and add, in their place, the words "IMO LSA Code, Chapter IV/4.3.5 (incorporated by reference, see § 160.151–5)"; and remove the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing (incorporated by reference, see § 160.151–5)".

39. In § 160.151–31—

a. Remove each instance of the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing";

b. In paragraph (a) introductory text, remove the word "part" and add, in its place, the text "46 CFR part"; and remove the words "of this chapter";

c. In paragraph (c), remove the symbol "§ " and add, in its place, the text "46 CFR"; and remove the words "of this chapter";

d. In paragraph (d), after the words "through 5.1.6 inclusive,", add the words "(incorporated by reference, see § 160.151–5)"; and

e. Add paragraph (h) to read as follows:

§ 160.151–31 Production inspections and tests of inflatable liferafts.

* * * * *

(h) The manufacturer must notify the cognizant Officer in Charge, Marine Inspection (OCMI) whenever final production inspections and tests are to be performed so that the OCMI may assign a marine inspector to the factory to witness the applicable tests and to ensure that the quality assurance program of the manufacturer is satisfactory.

§ 160.151–33 [Amended]

40. In 160.151–33—

a. In paragraph (b) introductory text, remove the words "Regulation III/39.7.3 of SOLAS" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.6.3 (incorporated by reference, see § 160.151–5)"; and

b. In paragraph (c) introductory text, remove the words "Regulation III/39.8 of SOLAS" and add, in their place, the words "IMO LSA Code, Chapter IV/4.2.7.1".

§ 160.151–57 [Amended]

41. In 160.151–57—

a. In paragraph (b)(1), remove the words "IMO Resolution A.689(17) paragraph 2/5.1.5" and add, in their place, the words "IMO Revised recommendation on testing, paragraph 2/5.1.5 (incorporated by reference, see § 160.151–5)";

b. In paragraph (b)(5)(i), remove the words "if its expiration date has passed" and add, in their place, the words "at the time of servicing if there is less than 6 months remaining before the expiration date";

c. In paragraph (b)(11), remove the words "IMO Resolution A.658(16)" and add, in their place, the words "IMO Revised recommendation on testing"; add the words "46 CFR" in front of the words "part 164"; and remove the words "of this subchapter";

d. In paragraph (e), remove the words "49 CFR 173.34" and add, in their place, the text "49 CFR 180.205";

e. In paragraph (f), remove the words "IMO Resolution A.689(17)" and add, in their place, the words "IMO Revised recommendation on testing"; and

f. In paragraph (g), after the text "(b) through", add the text "(f)".

§ 160.151–59 [Amended]

42. In 160.151–59(a), remove the words "regulations III/18.2, 19.3, 51, and 52 of SOLAS" and add, in their place, the words "SOLAS Chapter III, Regulation 35 (III/35)".

§ 160.151–61 [Amended]

43. In 160.151–61(a), remove the words "regulations III/19.3 and III/52 of SOLAS" and add, in their place, the words "SOLAS Chapter III, Regulation 36 (III/36)".

44. Add subpart 160.156 to read as follows:

Subpart 160.156—Rescue Boats and Fast Rescue Boats (SOLAS)

Sec.

160.156–1 Scope.
160.156–3 Definitions.
160.156–5 Incorporation by reference.
160.156–7 Design, construction, and performance of rescue boats and fast rescue boats.
160.156–9 Preapproval review.
160.156–11 Fabrication of prototype rescue boats for approval.
160.156–13 Approval inspections and tests for prototype rescue boats.
160.156–15 Production inspections, tests, quality control, and conformance of rescue boats.
160.156–17 Marking and labeling.
160.156–19 Operating instructions and information for the ship's training manual.
160.156–21 Operation and maintenance instructions.
160.156–23 Procedure for approval of design, material, or construction change.

Subpart 160.156—Rescue Boats and Fast Rescue Boats (SOLAS)

§ 160.156–1 Scope.

This subpart prescribes standards, tests, and procedures for seeking Coast Guard approval of a rescue boat, including a fast rescue boat, complying with SOLAS and the IMO LSA Code, for use on waters other than protected waters as defined in 46 CFR 175.400.

§ 160.156–3 Definitions.

In addition to the definitions in the IMO LSA Code (incorporated by reference, see § 160.156–5), in this subpart, the term:

Commandant means the Commandant (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–7126.

Full load means the weight of the complete rescue boat, including all required equipment, provisions, fuel, and the number of persons for which it is approved. This is also known as the condition "B" weight.

Independent laboratory has the same meaning as 46 CFR 159.001–3. A list of accepted independent laboratories is available from the Commandant and online at *http://cgmix.uscg.mil.*

Light load means the weight of the complete rescue boat empty and does not include fuel, required equipment, or the equivalent weight of persons. This is also known as the condition "A" weight.

Officer In Charge, Marine Inspection (OCMI) means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations. The "cognizant OCMI" is the OCMI who has immediate jurisdiction over a vessel for the purpose of performing the duties previously described.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

§ 160.156–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available

for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428–2959.

(1) ASTM A 36/A 36M–08 Standard Specification for Carbon Structural Steel, IBR approved for §§ 160.156–7 and 160.156–15 ("ASTM A 36").

(2) ASTM A 653/A 653M–08 Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process, IBR approved for §§ 160.156–7, 160.156–11 and 160.156–15 ("ASTM A 653").

(3) ASTM B 209–07 Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate, IBR approved for § 160.135–7 ("ASTM B 209").

(4) ASTM D 638–08 Standard Test Method for Tensile Properties of Plastics, IBR approved for § 160.156–11 ("ASTM D 638").

(5) ASTM D 790–07e1 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials, IBR approved for § 160.156–11 ("ASTM D 790").

(6) ASTM D 2584–08 Standard Test Method of Ignition Loss for Cured Reinforced Resins, IBR approved for §§ 160.156–11 and 160.156–15 ("ASTM D 2584").

(7) ASTM D 4029–09 Standard Specification for Finished Woven Glass Fabrics, IBR approved for § 160.156–7 ("ASTM D 4029").

(8) ASTM F 1166–07 Standard Practice for Human Engineering Design for Marine Systems, Equipment, and Facilities, IBR approved for §§ 160.156–7 and 160–156–13 ("ASTM F 1166").

(c) General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 22200 Crystal Drive, 11th Floor, Arlington, VA 22202, 703–605–5400.

(1) Federal Standard 595C—Colors Used in Government Procurement, IBR approved for § 160.156–7 "(FED–STD–595C").

(2) [Reserved]

(d) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution A.658(16), Use and Fitting of Retro-reflective Materials on Life-saving Appliances, IBR approved for § 160.156–7 ("IMO Res. A.658(16)").

(2) IMO Resolution A.760(18), Symbols Related to Life-Saving Appliances and Arrangements, IBR approved for §§ 160.156–7 and 160.156–19 ("IMO Res. A.760(18)").

(3) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for §§ 160.156–7 and 160.156–13 ("IMO Revised recommendation on testing").

(4) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for § 160.156–7 ("IMO LSA Code").

(5) MSC Circular 980, Standardized life-saving appliance evaluation and test report forms, IBR approved for §§ 160.156–7 and 160.156–13 ("IMO MSC Circ. 980").

(6) MSC.1 Circular 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems, IBR approved for § 160.156–21 ("IMO MSC.1 Circ. 1205").

(e) International Organization for Standardization (ISO), ISO Central Secretariat [ISO Copyright Office], Case Postale 56, CH–1211 Geneve 20, Switzerland.

(1) ISO 14125:1998 Fibre-reinforced plastic composites—Determination of flexural properties, IBR approved for § 160.156–11 ("ISO 14125").

(2) ISO 527–1:1993 Plastics—Determination of tensile properties, IBR approved for § 160.156–11 ("ISO 527").

(3) ISO 1172:1996 Textile-glass-reinforced plastics—Prepregs, moulding compounds and laminates—Determination of the textile-glass and mineral-filler content—Calcination methods, IBR approved for §§ 160.156–11 and 160.156–15 ("ISO 1172").

(4) ISO 15372:2000 Ships and marine technology—Inflatable rescue boats—Coated fabrics for inflatable chambers, IBR approved for §§ 160.156–7 and 160.156–15 ("ISO 15372").

(f) Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robins Avenue, Philadelphia PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/.*

(1) MIL–C–19663D, Cloth, Woven Roving, For Plastic Laminate, 4 AUG 1998, IBR approved for § 160.156–7 ("MIL–C–19663D").

(2) MIL–P–17549D(SH): Plastic Laminates, Fibrous Glass Reinforced, Marine, 31 AUG 1981, IBR approved for §§ 160.156–7 and 160.156–11 ("MIL–P–17549D(SH)").

(3) MIL–R–21607E(SH), Resins, Polyester, Low Pressure Laminating, Fire-Retardant, 25 May 1990, IBR approved for § 160.156–11 ("MIL–R–21607E(SH)").

(g) Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096.

(1) SAE J1527–93, Marine Fuel Hoses, IBR approved for § 160.156–7 ("SAE J1527").

(2) [Reserved]

(h) Underwriters Laboratories (UL), 2600 NW. Lake Rd, Camas, WA 98607–8542, Phone: 877–854–3577.

(1) UL 1102, Standard for Nonintegral Marine Fuel Tanks, IBR approved for § 160.156–7 ("UL 1102").

(2) UL 1185, Standard for Portable Marine Fuel Tanks, IBR approved for § 160.156–7 ("UL 1185").

§ 160.156–7 Design, construction and performance of rescue boats.

(a) To seek Coast Guard approval of a rescue boat, including a fast rescue boat, a manufacturer must comply with, and each rescue boat must meet, the requirements of the following:

(1) IMO LSA Code Chapter V (incorporated by reference, see § 160.156–5);

(2) IMO Revised recommendation on testing, Part 1/7 (incorporated by reference, see § 160.156–5) applicable to the type of rescue boat;

(3) 46 CFR part 159; and

(4) This subpart.

(b) Each rescue boat must meet the following requirements:

(1) *Design.* (i) Each rescue boat must be designed to be operable by persons wearing immersion suits.

(ii) Each rescue boat should be designed following standard human engineering practices described in ASTM F 1166 (incorporated by reference, see § 160.156–5). Design limits should be based on a range from the fifth percentile female to the ninety-fifth percentile male values for critical body dimensions and functional capabilities as described in ASTM F 1166. The dimensions for a person wearing an immersion suit correspond to the arctic-clothed dimensions of ASTM F 1166.

(2) *Visibility from operator's station.* (i) The operator's station must be designed such that the operator, when seated at the control station, has visibility 360 degrees around the rescue boat, with any areas obstructed by the rescue boat structure or its fittings visible by moving the operator's head and torso.

(ii) The operator, while still being able to steer and control the speed of the rescue boat, must be able to see the water—

(A) Over a 90 degree arc within 3 m (10 ft) of each side of the rescue boat;

(B) Over a 30 degree arc within 1 m (3 ft, 3 in) of each side of the rescue boat; and

(C) Within 0.5 m (1 ft, 8 in) of the entrances designated for recovering persons from the water.

(iii) In order to see a person in the water during recovery or docking operations, a hatch must be provided in fully enclosed rescue boats so that the operator can stand with his or her head outside the rescue boat for increased visibility, provided the operator can still steer and control the speed of the rescue boat.

(3) *Construction.* Each major rigid structural component of each rescue boat must be constructed of steel, aluminum, or Fiber Reinforced Plastic (FRP), or materials accepted by the Commandant as equivalent or superior.

(i) *General.* Metals in contact with each other must be either galvanically compatible or insulated with suitable non-porous materials. Provisions must also be made to prevent loosening or tightening resulting from differences of thermal expansion, freezing, buckling of parts, galvanic corrosion, or other incompatibilities.

(ii) *Steel.* Sheet steel and plate must be low carbon, commercial quality, either corrosion resistant or galvanized as per ASTM A 653, coating designation G90 (incorporated by reference, see § 160.156–5). Structural steel plates and shapes must be carbon steel as per ASTM A 36 (incorporated by reference, see § 160.156–5), or an equivalent or superior steel accepted by the Commandant. All steel products, except corrosion resistant steel, must be galvanized to provide high quality zinc coatings suitable for the intended service life in a marine environment. Corrosion resistant steel must be a standard 302 stainless steel or have equal or superior corrosion resistant characteristics.

(iii) *Aluminum.* Aluminum and aluminum alloys must conform to ASTM B 209 (incorporated by reference, see § 160.156–5) and be high purity for good marine corrosion resistance, free of iron, and containing not more than 0.6 percent copper.

(iv) *Fiber Reinforced Plastic (FRP).*

(A) *Resin.* Any resin used for the hull, canopy, hatches, rigid covers, and enclosures for the engine, transmission, and engine accessories, must be fire retardant and accepted by the Commandant in accordance with 46 CFR part 164, subpart 164.017.

(B) *Glass reinforcement.* Any glass reinforcement used must have good laminated wet strength retention and must meet the appropriate specification in this paragraph. Glass cloth must be a finished fabric woven from "E" electrical glass fiber yarns meeting ASTM D 4029–09 commercial style designation 1564 (incorporated by reference, see § 160.156–5). Woven roving must conform to MIL–C–19663D, (incorporated by reference, see § 160.156–5). Other glass materials equivalent or superior in strength, design, wet out, and efficiency will be given consideration on specific request to the Commandant.

(C) *Laminate.* All exposed surfaces of any finished laminate must present a smooth finish, and there must be no protruding surface fibers, open voids, pits, cracks, bubbles, or blisters. The laminate must be essentially free from resin-starved or overimpregnated areas, and no foreign matter must remain in the finished laminate. The entire laminate must be fully cured and free of tackiness, and must show no tendency to delaminate, peel, or craze in any overlay. The laminate must not be released from the mold until a Barcol hardness reading of not less than 40–55 is obtained from at least 10 places on the non-gel coated surface, including all interior inner and outer hull surfaces and built-in lockers. The mechanical properties of the laminate must meet the requirements for a Grade 3 laminate as specified in Table I of MIL–P–17549D(SH) (incorporated by reference, see § 160.156–5). Other grades will be given consideration on specific request to the Commandant.

(4) *Welding.* Welding must be performed by welders certified by the Commandant, American Bureau of Shipping, U.S. Navy, or an independent laboratory accepted by the Commandant. Only electrodes intended for use with the material being welded may be used. All welds must be checked using appropriate non-destructive tests.

(5) *Rescue boat buoyancy.* (i) The buoyancy material must be accepted by the Commandant as meeting the performance requirements of IMO Revised recommendation on testing, Part 1, 6.2.2 to 6.2.7, with a density of 32 ± 8 kg/m^3 (2 ± 0.5 lb/ft^3). The buoyancy foam or rescue boat manufacturer must certify the results of the testing to IMO Revised recommendation on testing, Part 1, 6.2.2 to 6.2.7 and submit those results to the Commandant. A list of accepted buoyancy foams may be obtained from the Commandant upon request.

(ii) All voids in the hull and canopy required to provide buoyancy for positive stability and self righting must be completely filled with Coast Guard-accepted buoyancy material.

(iii) Air in the inflated collar of a rigid-hull inflatable rescue boat will not be considered inherently buoyant material for the purposes of meeting the additional 280 N/person requirement of the LSA Code, Chapter IV/4.4.4.

(6) *Coated fabric.* Any coated fabric used in the construction of inflatable chambers on a rescue boat must be shown to have been subjected to the criteria listed in IMO MSC Circ. 980 for Inflation Chamber Characteristics Test (incorporated by reference, see § 160.156–5) by meeting the requirements of ISO 15372 (incorporated by reference, see § 160.156–5). The color of the finished fabric must be vivid reddish orange color number 12197 of FED–STD–595C (incorporated by reference, see § 160.156–5), or a durable fluorescent color of a similar hue. Each seam must be at least as strong as the weakest of the materials joined by the seam. Each seam must be covered with tape where necessary to prevent lifting of and damage to fabric edges.

(7) *Engines.* (i) In order to be accepted by the Commandant, any spark ignition engine fitted to an approved rescue boat must meet the U.S. Environmental Protection Agency emission requirements in 40 CFR part 91 or part 1045, as applicable, or for a compression ignition engine the requirements in 40 CFR part 89, part 94, or part 1042, as applicable, and have reports containing the same information as recommended by MSC Circ. 980 (incorporated by reference, see § 160.156–5) certified and witnessed by a U.S. Coast Guard inspector or an independent laboratory.

(ii) A hydraulic system, if used to start the engine, must be in accordance with 46 CFR part 58, subpart 58.30, with hose and fittings in accordance with 46 CFR part 56, subpart 56.60 except that—

(A) Push-on type fittings such as Aeroquip 1525–X, 25156–X, and FC332–X are not permitted; and

(B) The length of nonmetallic flexible hose is limited to 760 mm (30 in). Longer nonmetallic flexible hoses may be allowed in emergency steering systems at the discretion of the Commandant.

(iii) If a hand pump is provided, or if the engine has a manual starting system, adequate space must be provided for the hand pump or hand start operation.

(8) *Fuel system.* (i) The fuel system must meet 46 CFR 56.50–75(b) and, except as specified in this paragraph, the fuel tank must meet 46 CFR 58.50–10.

(ii) The fuel tank and fuel system must be in accordance with paragraph (A), (B), or (C) of this paragraph, as follows:

(A) Permanently installed fuel systems must meet the requirements in 46 CFR 160.135–7.

(B) Portable fuel systems for outboard engines must meet UL 1185 (incorporated by reference, see § 160.156–5) or equivalent, except that hoses must be Coast Guard Type A per SAE J1527 (incorporated by reference, see § 160.156–5), and hose clamps, primers, filters, and strainers must be successfully tested in accordance with 33 CFR 183.590. Anti-siphon devices must be provided in the fuel system to prevent fuel spillage when the hose is disconnected. Arrangements must be provided to secure the fuel tank in its normal operating position on the rescue boat.

(C) Fuel systems for outboard engines using non-integral, permanently installed fuel tanks must meet the requirements of 33 CFR part 183, subpart J—Fuel Systems. UL 1102 (incorporated by reference, see § 160.156–5) meets these requirements for fuel tanks.

(9) *Starting system batteries.* Each battery fitted in a totally enclosed rescue boat must be stored in a sealed compartment with exterior venting. If the rescue boat has more than one engine, then only one starting battery is required per engine.

(10) *Exhaust.* Engine exhaust must be routed away from bilge and potential oil drips. Any paint used on engines, manifolds, or exhaust must not give off fumes when heated. All exhaust lagging must be non-absorbent.

(11) *Propeller guard.* Each propeller on a rescue boat must be fitted with a propeller guard with a maximum opening of 76 mm (3 in) on all sides on which a person is likely to be exposed.

(12) *Control and steering station.* Rescue boat starting, maneuvering, and steering controls must be provided at the control and steering station.

(i) The throttle must be a continuous manual control and must be able to be set and locked at any position.

(ii) The control and steering station must be designed and laid out in accordance with ASTM F 1166 sections 9 and 10, so that controls and displays are unambiguous, accessible, and easy to reach and use from the operator's normal seated position, while wearing an immersion suit or a lifejacket.

(iii) Each control, gauge, or display must be identified by a marking posted on, above, or adjacent to the respective item. Each control must operate in a logical manner and be marked with an arrow to show direction of movement of control which will cause an increased response. Each gauge must be marked with the normal operating range and indicate danger or abnormal conditions. Each marking must be permanent and weatherproof.

(iv) Gauges, and audio and visual alarms, must be provided to monitor at least the following parameters on inboard engines—

(A) Coolant temperature, for a liquid cooled engine;

(B) Oil pressure, for an engine with an oil pump;

(C) Tachometer, for an engine not provided with over-speed protection; and

(D) State of charge, or rate of charge, for each rechargeable engine starting power source.

(13) *Drain plug.* The position of each drain plug must be clearly indicated by a permanent marking inside the lifeboat. The marking must be an arrow pointing in the direction of the plug, and the words "DRAIN PLUG" must be 76 mm (3 in) high and have letters of a color that contrast with their background. The marking must be clearly visible to a person within the vicinity of the drain plug.

(14) *Remote steering.* The procedure to change over from remote to local steering must be simple, not require the use of tools, and be clearly posted. There must be sufficient clear space to install, operate, remove, and stow the removable tiller arm. The tiller arm and its connection to the rudder stock must be of sufficient strength so that there is no slippage or bending of the tiller arm. Rudder stops or other means must be provided to prevent the rudder from turning too far on either side.

(15) *Lifelines.* Buoyant lifelines must be of ultraviolet resistant material.

(16) *Rails provided as handholds.* Rails provided as handholds on rigid and rigid-inflated rescue boats must extend for half the length of the rescue boat on both sides of the hull, and the clearance between the rail and hull must be at least 38 mm (1.5 in). The rails must be attached to the hull below the chine or turn of the bilge, must be faired to prevent any fouling, and not project beyond the widest part of the rescue boat.

(17) *Equipment list.* A weatherproof equipment list must be permanently mounted in a conspicuous and prominent location on a stowage locker or compartment, or on inside of canopy. The list must include a stowage plan oriented such that the stowage location of each item of loose equipment is readily apparent.

(18) *Release mechanism.* Each release mechanism fitted to a rescue boat, including a fast rescue boat, must be identified at the application for approval of the prototype rescue boat and must be approved under 46 CFR part 160, subparts 160.133 or 160.170. The release lever or control must be red in color, and the area immediately surrounding the control must be a sharply contrasting light color. An illustrated operating instruction plate or placard, showing the correct off-load and emergency on-load release procedure and recovery procedure, must be posted so that it is visible and legible from the helmsman's normal operating position. The plate or placard must be corrosion resistant and weatherproof and must be marked with the word "DANGER".

(19) *Painter/painter release.* Each rescue boat must be fitted with a device to secure the painter near the bow of the rescue boat. The device must be arranged such that the rescue boat does not exhibit unsafe or unstable characteristics when being towed by the ship with the ship underway at 5 knots. A quick-release device must be provided, which allows the painter to be released from inside the rescue boat while under tension. The quick-release handle must be clearly identified by a label.

(20) *Canopy lamp.* Any exterior rescue boat position-indicating light must be approved by the Commandant under approval series 161.101.

(21) *Manually-controlled interior light.* Any interior light must be approved by the Commandant under approval series 161.101.

(22) *Manual bilge pump.* Each rescue boat that is not automatically self-bailing must be fitted with a manual bilge pump approved under 46 CFR part 160, subpart 160.044, or an engine-powered bilge pump.

(23) *Labels and notices.* Any labels, caution and danger notices, and any operating, maintenance, or general instructions, must be in accordance with ASTM F 1166, Section 15, in terms of format, content, lettering size and spacing, color, and posted location. They must be illustrated with symbols in accordance with IMO Res. A.760(18) (incorporated by reference, see § 160.156–5), as applicable. Information and instruction plates, not specifically mentioned in this section, must not be posted in the vicinity of the control and steering station without prior approval from the Commandant. Identification label plates, if required, must be posted on or above the component or equipment to be identified.

(24) *Stowage.* Each stowage compartment must be supported and secured against movement. It must have adequate hand access for removing and storing the required equipment, and for cleaning the inside of the compartment.

There must be sufficient stowage volume to store the equipment required by 46 CFR 199.175.

(25) *Rescue boat equipment.* The rescue boat must be designed to accommodate and carry the equipment required by 46 CFR 199.175.

(26) *Exterior color.* The primary color of the exterior of the hull, exterior of any canopy or bow cover, and the interior of a rescue boat not covered by a canopy or bow cover must be a highly visible color equivalent to vivid reddish orange color number 12197 of FED–STD–595C, or a durable fluorescent color of a similar hue.

(27) *Navigation light.* Each rescue boat must have navigation lights that are in compliance with the applicable sections of the International and Inland Navigation Rules and meet 46 CFR 111.75–17.

(28) *Retroreflective material.* The exterior of each rescue boat and canopy must be marked with Type II retroreflective material approved under 46 CFR part 164, subpart 164.018. The arrangement of the retroreflective material must comply with IMO Res. A.658(16) (incorporated by reference, see § 160.156–5).

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

§ 160.156–9 Preapproval review.

(a) Except as provided in paragraph (c) of this section, the Commandant must conduct the preapproval review, required by this section, in accordance with 46 CFR 159.005–5.

(b) *Manufacturer requirements.* To seek Coast Guard approval of a rescue boat, the manufacturer must submit an application to the Commandant meeting the requirements of 46 CFR 159.005–5 for preapproval review. To meet the requirements of 46 CFR 159.005–5(a)(2), the manufacturer must submit in triplicate—

(1) A list of drawings, specifications, manuals, and any other documentation submitted, with each document identified by number, title, revision issue, and date;

(2) General arrangement and assembly drawings, including principal dimensions;

(3) Seating-arrangement plan, including a dimensioned seat form to scale;

(4) A complete material list, with each material referenced to a U.S. national standard or, if a copy is provided in English, an equivalent international standard;

(5) Plans for carriage and, in detail, stowage of equipment;

(6) Hull, canopy, and critical parts lay-up schedule for Fiber Reinforced Plastic (FRP) rescue boats, including fast rescue boats;

(7) Hull and canopy construction drawings, including particulars of joints, welds, seams, and other fabricating details;

(8) Weights and thickness of each major FRP structural component, including the hull, canopy, and inner liners, before outfitting;

(9) Specification and identification of materials such as steel, aluminum, resin, foam, fiberglass, coated fabric, and plastic used in the rescue boat's manufacture;

(10) Fabrication details for each major structural component, including details of each welded joint;

(11) Lines plans;

(12) Propulsion system specifications and arrangement and installation drawings;

(13) Steering system drawings and specifications;

(14) Release mechanism installation drawings and the mechanism's Coast Guard approval number;

(15) Plans for critical subassemblies;

(16) Hydraulic systems drawings and specifications, if installed;

(17) Electrical system schematics and specifications;

(18) Stability data, including righting arm curves in the light load and load condition for both intact and flooded;

(19) Drawings of all signs and placards, showing actual inscription, format, color, size, and location on the rescue boat;

(20) Complete data pertinent to the installation and use of the proposed rescue boat, including—

(i) The light load (condition A) and full load (condition B) weights; and

(ii) Complete details of the lifting arrangement to include enough detail for operators of the rescue boat to select a suitable release mechanism approved under subpart 160.133 or 160.170 of this part;

(21) An operation, maintenance, and training manual as described in §§ 160.156–19 and 160.156–21 of this subpart;

(22) A description of the quality control procedures and record keeping that will apply to the production of the rescue boat, which must include but is not limited to—

(i) The system for checking material certifications received from suppliers;

(ii) The method for controlling the inventory of materials;

(iii) The method for checking quality of fabrication, seams, and joints, including welding inspection procedures; and

(iv) The inspection checklists used during various stages of fabrication to assure that the approved lifeboat complies with the approved plans and the requirements of this subpart;

(23) Full details of any other unique capability;

(24) Any other drawing(s) necessary to show that the rescue boat complies with the requirements of this subpart;

(25) The location or address of all manufacturing sites, including the name and address of any subcontractors, where the rescue boat will be constructed; and

(26) The name of the independent laboratory that will perform the duties prescribed in §§ 160.156–11 and 160.156–15 of this subpart.

(c) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may conduct preapproval review required by this section so long as the preapproval review is conducted in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(d) *Plan quality.* The plans and specifications submitted to the Commandant under this section must—

(1) Be provided in English, including all notes, inscriptions, and designations for configuration control;

(2) Address each of the applicable items in paragraph (b) of this section in sufficient detail to show that the lifeboat meets the construction requirements of this subpart;

(3) Accurately depict the proposed rescue boat;

(4) Be internally consistent;

(5) Be legible; and

(6) If reviewed by an independent laboratory under paragraph (c) of this section, include the independent laboratory's attestation that the plans meet the quality requirements of this section.

(e) *Alternatives.* Alternatives in materials, parts, or construction, and each item replaced by an alternative, must be clearly indicated as such in the plans and specifications submitted to the Commandant under this section.

(f) *Coast Guard review.* If the plans or specifications do not comply with the requirements of this section, Coast Guard review may be suspended, and the applicant notified accordingly.

§ 160.156–11 Fabrication of prototype rescue boats for approval.

(a) If the manufacturer is notified that the information submitted in accordance with § 160.156–9 of this subpart is satisfactory to the Commandant, the manufacturer may proceed with fabrication of the prototype rescue boat as set forth in this section.

(b) Unless the Commandant directs otherwise, an independent laboratory must conduct inspections, tests, and oversight required by this section. Prototype inspections and tests of a rescue boat must be carried out in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007 and in this section, unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional prototype tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(c) Fabrication of a rescue boat must proceed in the following sequence:

(1) The manufacturer must arrange for an independent laboratory (or Coast Guard inspector if required under paragraph (b) of this section) to inspect, test, and oversee the rescue boat during its fabrication and prepare an inspection and test report meeting the requirements of 46 CFR 159.005–11.

(2) The independent laboratory must make such inspections as are necessary to determine that the prototype is constructed by the methods and with the materials specified in the plans reviewed under § 160.156–9 of this subpart. By conducting at least one inspection during its construction, the independent laboratory must determine the prototype rescue boat conforms with those plans by inspecting—

(i) *Fiber reinforced plastic (FRP) construction.*

(A) FRP components of each prototype rescue boat must have a layup made of unpigmented clear resins so that details of construction are visible for inspection. Test panels representative of each prototype layup must be tested in accordance with MIL–P–17549D(SH) (incorporated by reference, see § 160.156–5). If an accepted MIL–R–21607E(SH) Grade B resin is used for the prototype rescue boat, additives for fire retardancy must not be used so that the laminate is translucent for inspection purposes. A prototype test rescue boat with Grade B resins will not be marked in accordance with § 160.156–17 of this subpart for use as a production rescue boat regardless of the outcome of the performance tests. Whichever accepted resin the manufacturer decides to use for the prototype rescue boat, the same resin must be used in the production rescue boats.

(B) The hull, canopy, and major structural laminates of each prototype FRP rescue boat must be tested for resin content, ultimate flexural strength, and tensile strength. The test samples must be cut out from the prototype rescue boat, or be laid up at the same time, using the same procedures and by the same operators as the laminate used in the rescue boat. The number of samples used for each test, and the conditions and test methods used, must be as per the applicable test specified in this paragraph. The resin content must be determined as per ASTM D 2584 or ISO 1172 (incorporated by reference, see § 160.156–5). The flexural ultimate strength must be determined by ASTM D 790 method I (test condition "A", flatwise, dry) or the corresponding ISO 14125 test method (incorporated by reference, see § 160.156–5). The tensile strength, lengthwise, must be determined as per ASTM D 638 or ISO 527 (incorporated by reference, see § 160.156–5).

(C) Each major FRP component, such as the hull, canopy, and inner liner(s) of each prototype FRP rescue boat, must be examined and weighed after it is completed but before it is assembled. If the rescue boat is constructed by the spray lay-up technique, the hull and canopy thicknesses must be measured using ultrasonic or equivalent techniques.

(ii) *Steel construction.* Steel sheet and plate used for the hull, floors, and other structural components of a prototype steel rescue boat must meet the bend tests requirement specified under ASTM A 653 (incorporated by reference, see § 160.156–5) after galvanizing or other anti-corrosion treatment has been applied. This may be demonstrated through supplier's certification papers or through witnessing actual tests.

(iii) *Welding.* Structural components of each prototype rescue boat joined by welding must be joined by the welding procedures and materials per the plans reviewed under § 160.156–9 of this subpart and by welders appropriately qualified.

(iv) *Buoyancy material.* If block foam buoyancy material is used, each piece must be weighed after it is cut and shaped to make sure that the correct amount of foam is installed. If foamed-in-place buoyancy material is used, a separate sample of the foam must be poured, and used to make a density determination after it has set. The density must be 32 ± 8 kg/m^3 (2 ± 0.5 lb/ft^3). Each major subassembly such as the hull-with-liner and canopy-with-liner must be weighed after the buoyancy foam is installed and before it is further assembled.

(v) *Coated fabric.* Coated fabric for inflatable collars used in the construction of each rescue boat must meet the requirements specified under § 160.156–7(b)(3) of this subpart. This may be demonstrated through a supplier's certification papers or through witnessing actual tests.

(vi) *Installation of the propulsion system.*

(vii) *Installation of the steering system.*

(3) The independent laboratory must submit the inspection report to the Commandant.

§ 160.156–13 Approval inspections and tests for prototype rescue boats.

(a) After the Commandant notifies the manufacturer that the prototype rescue boat is in compliance with the requirements of § 160.156–11 of this subpart, the manufacturer may proceed with the prototype approval inspections and tests required under this section. The prototype rescue boat, the construction of which was witnessed under § 160.135–11 of this part, must be used for the tests in this section.

(b) Except as provided in paragraph (f) of this section, the Coast Guard must conduct the approval inspections and witness the approval tests required under this section.

(c) *Manufacturer requirements.* To proceed with approval inspections and tests required by this section, the manufacturer must—

(1) Notify the Commandant and cognizant Officer in Charge, Marine Inspection (OCMI) of where the approval inspections and tests required under this section will take place, and such notification must be in sufficient time to allow making travel arrangements;

(2) Arrange a testing schedule that allows for a Coast Guard inspector to travel to the site where the testing is to be performed;

(3) Admit the Coast Guard inspector to any place where work or testing is performed on rescue boats or their component parts and materials for the purpose of—

(i) Conducting inspections as necessary to determine that the prototype is constructed by the methods and with the materials specified in the plans reviewed under § 160.156–9, and the inspection report under § 160.156–11, of this subpart;

(ii) Assuring that the quality assurance program of the manufacturer is satisfactory;

(iii) Witnessing tests; and

(iv) Taking samples of parts or materials for additional inspections or tests; and

(4) Make available to the Coast Guard inspector the affidavits or invoices from the suppliers of all essential materials used in the production of rescue boats, together with records identifying the lot

or serial numbers of the rescue boats in which such materials were used.

(d) *Tests*—(1) *Prototype rescue boat readiness.* All tests must be conducted on a completely outfitted rescue boat, including fixed equipment such as a compass, searchlight, and navigating lights. Loose equipment may be substituted by weights.

(2) *FRP prototype rescue boat lay-up.* For the prototype of each design of an FRP rescue boat, the lay-up must be made of unpigmented resins and clear gel coat.

(3) *Fuel tank.* Each non-portable fuel tank must be tested by a static head above the tank top of 3 m (10 ft) of water without showing any leaks or signs of permanent distortion.

(4) *IMO Revised recommendation on testing.* Each prototype rescue boat of each design must pass each of the tests for the applicable hull type described in the IMO Revised recommendation on testing, Part 1, section 7 (incorporated by reference, see § 160.156–5). Tests must be conducted in accordance with these paragraphs of IMO Revised recommendation on testing, Part 1, with the following modifications:

(i) *Fire retardancy/release mechanism and engine tests* (Paragraphs 1/6.2, 6.9, 6.10, 6.14). The tests in the following IMO Revised recommendation on testing paragraphs may be accomplished independent of the rescue boat, and may be considered completed and need not be repeated if the tests have been previously shown to meet the following necessary requirements—

(A) Paragraphs 6.9.3 through 6.9.6;

(B) Paragraphs 6.10.2 through 6.10.6; and

(C) Paragraphs 6.14.6 through 6.14.8.

(ii) *Impact test* (Paragraph 1/6.4). The rigid vertical surface must not be displaced or deformed as a result of the test.

(iii) *Flooded stability test for rigid rescue boats only* (Paragraph 1/6.8). Any materials used to raise the test weights representing the rescue boat occupants above the seat pan must be at least as dense as fresh water.

(iv) *Rescue boat operational test, operation of engine* (Paragraph 1/7.1.5). For the 4-hour rescue boat maneuvering period, the rescue boat must not (except for a short period to measure towing force and to demonstrate towing fixture durability) be secured, and must be run through its full range of speeds and full range of all controls throughout the period.

(v) *Survival recovery test* (Paragraph 1/6.10.8). The recovery demonstration must show that no more than two crewmembers are required to recover a helpless person of ninety-fifth percentile by weight described in ASTM F 1166 (incorporated by reference, see § 160.156–5) while the crewmembers and helpless person are each wearing a lifejacket.

(vi) *Rescue boat seating space test* (Paragraph 1/7.1.3). The average mass of persons used to test the rescue boat seating space must be determined by weighing as a group or individually. Each person must wear an inherently buoyant SOLAS lifejacket with at least 150 N of buoyancy or a Coast Guard-approved lifejacket approved under approval series 160.155. The operator(s) must demonstrate that the rescue boat can be operated while wearing a Coast Guard approved, insulated-buoyant immersion suit approved under approval series 160.171. The Commandant will give consideration to requests to test at, and designate rescue boats for, a heavier occupant weight than that stated in the IMO LSA Code, Chapter V (incorporated by reference, § 160.156–5).

(5) *Visual inspection.* Each rescue boat must be visually inspected to confirm—

(i) Compliance with this subpart;

(ii) Conformance with the plans reviewed under § 160.156–9 of this subpart; and

(iii) Ease of operation and maintenance.

(e) *Test waiver.* The Commandant may waive certain tests for a rescue boat identical in construction to smaller and larger rescue boats that have successfully completed the tests. Tests associated with rescue boat components that have already been approved by the Commandant are not required to be repeated.

(f) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may perform approval inspections and witness approval tests required by this section so long as the inspections and tests are performed and witnessed in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(g) After completion of approval inspections and tests required by this section, the manufacturer must comply with the requirements of 46 CFR 159.005–9(a)(5) by preparing and submitting to the Commandant for review—

(1) The prototype approval test report containing the same information recommended by IMO MSC Circ. 980 (incorporated by reference, see § 160.156–5). The report must include a signed statement by the Coast Guard inspector (or independent laboratory as permitted by paragraph (f) of this section) who witnessed the testing, indicating that the report accurately describes the testing and its results; and

(2) The final plans of the rescue boat as built. The plans must include, in triplicate—

(i) The instructions for training and maintenance described in §§ 160.156–19 and 160.156–21 of this subpart; and

(ii) The final version of the plans required under § 160.156–9 of this subpart.

(h) The Commandant will review the report and plans submitted under paragraph (g) of this section, and, if satisfactory to the Commandant, will approve the plans under 46 CFR 159.005–13.

§ 160.156–15 Production inspections, tests, quality control, and conformance of rescue boats.

(a) Unless the Commandant directs otherwise, an independent laboratory must conduct inspections, tests, and oversight required by this section. Production inspections and tests of rescue boats must be carried out in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007 and in this section, unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(b) *Manufacturer's responsibility.* The manufacturer must—

(1) Institute a quality control procedure to ensure that all production rescue boats are produced to the same standard, and in the same manner, as the prototype rescue boat approved by the Commandant. The manufacturer's quality control personnel must not work directly under the department or person responsible for either production or sales;

(2) Schedule and coordinate with the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) to ensure that all tests are performed as described in this section;

(3) Submit to the Commandant, a yearly report that contains the following—

(i) Serial number and date of final assembly of each rescue boat constructed;

(ii) Name of the representative of the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section); and

(iii) Name of the vessel and company receiving the rescue boat, if known;

(4) Ensure that the arrangement and materials entering into the construction of the rescue boat are in accordance with plans approved under § 160.156–13(h) of this subpart;

(5) Allow an independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) access to any place where materials are stored for the rescue boat, work or testing is performed on rescue boats or their component parts and materials, or records are retained to meet the requirements of paragraph (c) of this section, for the purpose of—

(i) Assuring that the quality control program of the manufacturer is satisfactory;

(ii) Witnessing tests; or

(iii) Taking samples of parts or materials for additional inspections or tests; and

(6) Ensure that the independent laboratory conducts the inspections and witnesses the tests required by paragraph (e) of this section, and further conducts a visual inspection to verify that the rescue boats are being made in accordance with the plans approved under § 160.156–13(h) of this subpart and the requirements of this subpart.

(c) *Recordkeeping.* The manufacturer must maintain records in accordance with 46 CFR 159.007–13. The manufacturer must keep records of all items listed in this section for at least 5 years from the date of termination of approval of each rescue boat. The records must include—

(1) A copy of this subpart, other CFR sections referenced in this subpart, and each applicable document listed in § 160.156–5 of this subpart;

(2) A copy of approved plans, documentation, and certifications;

(3) A current certificate of approval for each approved rescue boat;

(4) Affidavits, certificates, or invoices from the suppliers identifying all essential materials used in the production of approved rescue boats, together with records identifying the serial numbers of the rescue boats in which such materials were used;

(5) Start and finish date and time of the lay-up of each major Fiber Reinforced Plastic (FRP) component such as the hull, canopy, and inner liner and the names of the operator(s);

(6) Start and finish date and time of pouring of foam-in-place rigid buoyancy foam, and name of operator(s);

(7) Records of all structural welding and name of operator(s);

(8) Records of welder certificates, training and qualifications;

(9) Date and results of calibration of test equipment and the name and address of the company or agency that performed the calibration;

(10) The serial number of each production rescue boat, along with records of its inspections and tests carried out under this section; and

(11) The original purchaser of each rescue boat and the vessel on which it was installed, if known.

(d) *Independent laboratory responsibility.* The independent laboratory must perform or witness the inspections and tests under paragraph (e) in this section for each Coast Guard-approved rescue boat to be installed on a U.S.-flagged vessel. If the manufacturer also produces rescue boats for approval by other maritime safety administrations, the inspections may be coordinated with inspection visits for those administrations.

(e) *Production inspections and tests.* Each approved rescue boat must be inspected and tested in accordance with each of the following procedures:

(1) *In-process inspections and tests.* In accordance with the interval prescribed in paragraph (d)(1) of this section, each production rescue boat must be examined during lay-up of the hull to verify that the lay-up conforms to the approved drawings. Each FRP major component, such as the hull, canopy, and inner liner, must be examined and weighed after it is completed but before assembled. If the rescue boat is constructed by the spray lay-up technique, the hull and canopy thicknesses must be measured using ultrasonic or equivalent techniques. Laboratory tests of laminates must be conducted at this time. Test samples must be cut out from the rescue boat itself or be laid up at the same time, using the same procedures, and by the same operators as the laminate used in the rescue boat. The number of samples used for each test, and the conditions and test methods used, must be as described in the applicable test specified in this paragraph.

(i) *Weight.* The weight of each FRP section, such as hull, canopy, and inner liner, must be within 10 percent of similar sections of the prototype rescue boat. These weights must be the bare laminate weights. Backing plates that are molded into the laminate may be included.

(ii) *Thickness.* The average thickness of each section of sprayed-up laminate must be within 20 percent of the corresponding sections of the prototype.

(iii) *Resin content.* Laminate samples from the hull, canopy, and inner liners must be tested in accordance with ASTM D 2584 or ISO 1172 (incorporated by reference, see § 160.156–5). The resin content must be within 8 percentage points of the prototype results. If the resin content does not comply, flexural ultimate strength and tensile tests in paragraph (e)(1)(iv) of this section must be conducted.

(iv) *Flexural ultimate strength and tensile tests.* Each laminate sample from each major component, such as hull and liner, that does not comply with the resin content requirement in paragraph (e)(1)(iii) of this section, and from each component of every fifth production rescue boat, must be subjected to the flexural ultimate strength and tensile strength tests as described in § 160.156–11(c)(2)(i)(B) of this subpart. The values must be at least 90 percent of the prototype results.

(v) *Buoyancy material.* If block foam buoyancy material is used, each piece must be weighed after it is cut and shaped to make sure that the correct amount of foam is installed. If foamed-in-place buoyancy material is used, a separate sample of the foam must be poured, and used to make a density determination after it has set. The density must be 32 +/− 8 kg/m^3 (2 +/− 0.5 lb/ft^3).

(vi) *Steel sheet and plate.* Steel sheet and plate for the hull, floors, and other structural components must meet ASTM A 36 and ASTM A 653 as applicable (incorporated by reference, see § 160.156–5). Non-corrosive resistant steel must meet the coating mass and bend tests requirement specified under ASTM A 653. Compliance for this paragraph can be ascertained through supplier's certification papers or through conducting actual tests.

(vii) *Fabric.* The coated fabric for inflatable collars, when used, for the construction of each rescue boat must meet ISO 15372 (incorporated by reference, see § 160.156–5). This compliance can be ascertained through a supplier's certification papers or through witnessing actual tests.

(viii) *Fuel tank.* Each fuel tank must be tested by a static head above the tank top of 3 m (10 ft) of water without showing any leaks or signs of permanent distortion.

(ix) *Welding.* It must be determined that structural components joined by welding was performed by welders who are appropriately qualified and that the welding procedure and materials are as per the plans approved under § 160.156–13(h) of this subpart.

(2) *Post assembly tests and inspections.* The finished rescue boat must be visually inspected inside and out. The manufacturer must develop and maintain a visual inspection checklist designed to ensure that all applicable requirements have been met

and the rescue boat is equipped in accordance with approved plans. At a minimum, each rescue boat must be operated for 2 hours, during which all rescue boat systems must be exercised.

§ 160.156–17 Marking and labeling.

(a) Each rescue boat must be marked with a plate or label permanently affixed to the hull in a conspicuous place readily accessible for inspection and sufficiently durable to withstand continuous exposure to environmental conditions at sea for the life of the rescue boat.

(b) The plate or label must be in English, but may also be in other languages.

(c) The plate or label must contain the—

(1) Name and address of the manufacturer;

(2) Manufacturer's model identification;

(3) Name of the independent laboratory that witnessed the prototype or production tests;

(4) Serial number of the rescue boat;

(5) U.S. Coast Guard approval number;

(6) Month and year of manufacture;

(7) Material of hull construction;

(8) Number of persons for which the rescue boat is approved;

(9) Light load and full load (condition A and condition B weight); and

(10) Word "SOLAS."

§ 160.156–19 Operating instructions and information for the ship's training manual.

(a) Each rescue boat must have instructions and information for the ship's training manual, that use the symbols from IMO Res. A.760(18) (incorporated by reference, see § 160.156–5) to describe the location and operation of the rescue boat.

(b) The instructions and information required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their launching systems.

(c) The rescue boat manufacturer must make the instructions and information required by paragraph (a) of this section available—

(1) In English to purchasers of a rescue boat approved by the Coast Guard; and

(2) In the form of an instruction placard providing simple procedures and illustrations for operation of the rescue boat. The placard must be not greater than 36 cm (14 in) by 51 cm (20 in), and must be made of durable material and suitable for display near installations of rescue boats on vessels.

§ 160.156–21 Operation and maintenance instructions.

(a) In order to comply with SOLAS, each rescue boat must have operation and maintenance instructions that—

(1) Follows the general format and content specified in MSC.1 Circ. 1205 (incorporated by reference, see § 160.156–5); and

(2) Includes a checklist for use in monthly, external inspections of the rescue boat.

(b) The rescue boat manufacturer must make the manual required by paragraph (a) of this section available in English to purchasers of a rescue boat approved by the Coast Guard.

(c) The operation and maintenance instructions required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their launching systems.

§ 160.156–23 Procedure for approval of design, material, or construction change.

(a) Each change in design, material, or construction from the plans approved under 46 CFR 159.005–13 and § 160.156–13(h) of this subpart must be approved by the Commandant before being used in any production rescue boat. The manufacturer must submit any such change following the procedures set forth in § 160.156–9 of this subpart, but documentation on items that are unchanged from the plans approved under 46 CFR 159.005–13 and § 160.156–13(h) of this subpart need not be resubmitted.

(b) Unless determined by the Commandant to be unnecessary, a prototype rescue boat with each change described in paragraph (a) of this section must be made and tested according to the procedures for new approvals in §§ 160.156–9 through 160.156–13 of this subpart.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

45. Add subpart 160.170 to read as follows:

Subpart 160.170—Davit-Launched Liferaft Automatic Release Hooks (SOLAS)

Sec.

160.170–1 Scope.
160.170–3 Definitions.
160.170–5 Incorporation by reference.
160.170–7 Design, construction, and performance of release mechanisms.
160.170–9 Preapproval review.
160.170–11 [Reserved]
160.170–13 Approval inspections and tests for prototype release mechanisms.
160.170–15 Production inspections, tests, quality control, and conformance of release mechanisms.
160.170–17 Marking and labeling.
160.170–19 Operating instructions and information for the ship's training manual.
160.170–21 Operation and maintenance instructions.
160.170–23 Procedure for approval of design, material, or change.

Subpart 160.170—Davit-Launched Liferaft Automatic Release Hooks (SOLAS)

§ 160.170–1 Scope.

This subpart prescribes standards, tests, and procedures for seeking Coast Guard approval of an automatic release mechanism complying with SOLAS and the IMO LSA Code, for use with davit-launched liferafts approved under 46 CFR part 160, subparts 160.051 or 160.151, and single-fall rescue boats approved under 46 CFR part 160, subpart 160.156.

§ 160.170–3 Definitions.

In addition to the definitions in the IMO LSA Code (incorporated by reference, see § 160.170–5), in this subpart, the term:

Commandant means the Commandant (CG–5214), U.S. COAST GUARD, 2100 2ND ST SW., STOP 7126, WASHINGTON, DC 20593–7126.

Full load means the weight of the complete rescue boat including all required equipment, provisions, fuel (if applicable), and the number of persons for which it is approved. This is also known as the "condition B" weight.

Independent laboratory has the same meaning as 46 CFR 159.001–3. A list of accepted independent laboratories is available from the Commandant and online at *http://cgmix.uscg.mil.*

Light load means the weight of the complete rescue boat empty and does not include fuel, required equipment, or the equivalent weight of persons. This is also known as the "condition A" weight.

Officer In Charge, Marine Inspection (OCMI) means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations. The "cognizant OCMI" is the OCMI who has immediate jurisdiction over a vessel for the purpose of performing the duties previously described.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

§ 160.170–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST., SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428–2959.

(1) ASTM A 36/A 36M–08 Standard Specification for Carbon Structural Steel, IBR approved for § 160.170–7 ("ASTM A 36").

(2) ASTM A 653/A 653M–08 Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process, IBR approved for §§ 160.170–7, 160.170–13, and 160.170–15 ("ASTM A 653").

(3) ASTM F 1166–07 Standard Practice for Human Engineering Design for Marine Systems, Equipment, and Facilities, IBR approved for § 160.170–7 ("ASTM F 1166").

(c) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) IMO Resolution A.760(18), Symbols Related to Life-Saving Appliances and Arrangements, IBR approved for § 160.170–19 ("IMO Res. A.760(18)").

(2) IMO Resolution MSC.81(70), IMO Revised recommendation on testing of life-saving appliances, as amended by IMO Resolutions MSC.226(82) and MSC.274(85), IBR approved for §§ 160.170–7, 160.170–13, and 160.170–15 ("Revised recommendation on testing").

(3) IMO Resolution MSC.48(66), International Life-Saving Appliance Code, as amended by IMO Resolutions MSC.207(81), MSC.218(82), and MSC.272(85), IBR approved for §§ 160.170–7 ("IMO LSA Code").

(4) MSC Circular 980, Standardized life-saving appliance evaluation and test report forms, IBR approved for § 160.170–13 ("IMO MSC Circ. 980").

(5) MSC.1 Circular 1205, Guidelines for Developing Operation and Maintenance Manuals for Lifeboat Systems, IBR approved for § 160.170–21 ("IMO MSC.1 Circ. 1205").

§ 160.170–7 Design, construction, and performance of release mechanisms.

(a) To seek Coast Guard approval of a release mechanism, a manufacturer must comply with, and each release mechanism must meet, the requirements of the following—

(1) IMO LSA Code, Chapter VI/6.1.5 (incorporated by reference, see § 160.170–5);

(2) IMO Revised recommendation on testing Part 1/8.2 (incorporated by reference, see § 160.170–5).

(3) 46 CFR part 159; and

(4) This subpart.

(b) Each release mechanism must meet the following requirements—

(1) *Design.* All functions of the release mechanism, including removal of interlocks, operation of the release handle, resetting the hooks, and reattaching the falls to the hooks, must be designed to be operable by persons wearing immersion suits;

(2) Each release mechanism should be designed following standard human engineering practices described in ASTM F 1166 (incorporated by reference, see § 160.170–5). Design limits should be based on a range from the fifth percentile female to the ninety-fifth percentile male values for critical body dimensions and functional capabilities as described in ASTM F 1166. The dimensions for a person wearing an immersion suit correspond to the arctic-clothed dimensions of ASTM F 1166;

(3) *Steel.* Each major structural component of each release mechanism must be constructed of steel. Other materials may be used if accepted by the Commandant as equivalent or superior. Sheet steel and plate must be low-carbon, commercial quality, either corrosion resistant or galvanized as per ASTM A 653 (incorporated by reference, see § 160.170–5), coating designation G115. Structural steel plates and shapes must be carbon steel as per ASTM A 36 (incorporated by reference, see § 160.170–5). All steel products, except corrosion resistant steel, must be galvanized to provide high-quality zinc coatings suitable for the intended service life in a marine environment. Each fabricated part must be galvanized after fabrication. Corrosion resistant steel must be a standard 302 stainless steel or have equal or superior corrosion resistant characteristics;

(4) *Welding.* Welding must be performed by welders certified by the Commandant, American Bureau of Shipping, U.S. Navy, or an independent laboratory accepted by the Commandant. Only electrodes intended for use with the material being welded may be used. All welds must be checked using appropriate non-destructive tests;

(5) Metals in contact with each other must be either galvanically compatible or insulated with suitable non-porous materials. Provisions must also be made to prevent loosening or tightening resulting from differences of thermal expansion, freezing, buckling of parts, galvanic corrosion, or other incompatibilities;

(6) Screws, nuts, bolts, pins, keys, and other similar hardware, securing moving parts must be fitted with suitable lock washers, cotter pins, or locks to prevent them from coming adrift;

(7) The on-load operation of the release mechanism must require two separate, deliberate actions by the operator;

(8) To prevent an accidental release during recovery of the boat, the release hooks must not be able to carry any weight until the release mechanism is properly reset;

(9) The release and recovery procedures must be included as an illustrated operation instruction plate or placard. The plate or placard must be corrosion resistant and weatherproof and must be marked with the word "DANGER". The illustrations must correspond exactly to those used in the instruction and maintenance manual provided by the manufacturer;

(10) The release lever or control must be red in color, and the area immediately surrounding the control must be a sharply contrasting light color;

(11) Each load carrying part of the release mechanism, including its connection to the boat, must be designed with a safety factor of six based on the ultimate strength of the materials used;

(12) The release lever and its connection to the release mechanism must be of sufficient strength so that there is no deformation of the release lever or the release control assembly during on-load release;

(13) Positive means of lubrication must be provided for each bearing which is not permanently lubricated. Points of lubrication must be so located that they are clearly visible and accessible in the installed position in the boat;

(14) A hydraulic system, if used to activate the release mechanism, must be in accordance with 46 CFR part 58,

subpart 58.30, with hose and fittings in accordance with 46 CFR part 56, subpart 56.60, except that—

(i) Push-on type fittings such as Aeroquip 1525–X, 25156–X, and FC332–X are not permitted;

(ii) The length of nonmetallic flexible hose is limited to 760 mm (30 in); and

(iii) If a hand pump is provided, adequate space must be provided for the hand pump or hand operation.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

§ 160.170–9 Preapproval review.

(a) Except as provided in paragraph (c) of this section, the Commandant must conduct the preapproval review, required by this section, in accordance with 46 CFR 159.005–5.

(b) *Manufacturer requirements.* To seek Coast Guard approval of a release mechanism, the manufacturer must submit an application to the Commandant meeting the requirements of 46 CFR 159.005–5 for preapproval review. To meet the requirements of 46 CFR 159.005–5(a)(2), the manufacturer must submit in triplicate—

(1) A list of drawings, specifications, manuals, and any other documentation submitted, with each document identified by number, title, revision issue, and date;

(2) General arrangement and assembly drawings, including principal dimensions;

(3) Stress calculations for all load carrying parts, including the release hooks, release mechanisms, and connections;

(4) Hydraulic systems drawings and specifications, if installed;

(5) Drawings of all signs and placards showing actual inscription, format, color, and size;

(6) An operation, maintenance, and training manual as described in §§ 160.170–19 and 160.170–21 of this subpart;

(7) A description of the quality control procedures and recordkeeping that will apply to the production of the release mechanism, which must include but is not limited to—

(i) The system for checking material certifications received from suppliers;

(ii) The method for controlling the inventory of materials;

(iii) The method for checking quality of fabrication and joints, including welding inspection procedures; and

(iv) The inspection checklists used during various stages of fabrication to assure that the approved release mechanism complies with the approved plans and the requirements of this subpart;

(8) Full details of any other unique capability;

(9) Any other drawing(s) necessary to show that the release mechanism complies with the requirements of this subpart;

(10) The location or address of all manufacturing sites, including the name and address of any subcontractors, where the release mechanism will be constructed; and

(11) The name of the independent laboratory that will perform the duties prescribed in § 160.170–15 of this subpart.

(c) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may conduct preapproval review required by this section, so long as the preapproval review is conducted in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(d) *Plan quality.* The plans and specifications submitted to the Commandant under this section must—

(1) Be provided in English, including all notes, inscriptions, and designations for configuration control;

(2) Address each of the applicable items in paragraph (b) of this section in sufficient detail to show that the release mechanism meets the construction requirements of this subpart;

(3) Accurately depict the proposed automatic release hook;

(4) Be internally consistent;

(5) Be legible; and

(6) If reviewed by an independent laboratory under paragraph (c) of this section, include the independent laboratory's attestation that the plans meet the quality requirements of this section.

(e) *Alternatives.* Alternatives in materials, parts, or construction, and each item replaced by an alternative, must be clearly indicated as such in the plans and specifications submitted to the Commandant under this section.

(f) *Coast Guard review.* If the plans or specifications do not comply with the requirements of this section, Coast Guard review may be suspended, and the applicant notified accordingly.

§ 160.170–11 [Reserved]

§ 160.170–13 Approval inspections and tests for prototype release mechanisms.

(a) If the manufacturer is notified that the information submitted in accordance with § 160.170–9 of this subpart is satisfactory to the Commandant, the manufacturer may proceed with fabrication of the prototype release mechanism, and the approval inspections and tests required under this section.

(b) Except as provided in paragraph (f) of this section, the Coast Guard must conduct the approval inspections and witness the approval tests required under this section.

(c) *Manufacturer's requirements.* To proceed with approval inspections and tests required by this section, the manufacturer must—

(1) Notify the Commandant and cognizant Officer in Charge, Marine Inspection (OCMI) of where the approval inspections and tests required under this section will take place, and such notification must be in sufficient time to allow making travel arrangements;

(2) Arrange a testing schedule that allows for a Coast Guard inspector to travel to the site where the testing is to be performed;

(3) Admit the Coast Guard inspector to any place where work or testing is performed on release mechanisms or their component parts and materials for the purpose of—

(i) Conducting inspections as necessary to determine that the prototype—

(A) Conforms with the plans reviewed under § 160.170–9 of this subpart;

(B) Is constructed by the methods and with the materials specified in the plans reviewed under § 160.170–9 of this subpart; and

(C) When welding is part of the construction process, is constructed by the welding procedure and materials as per the plans reviewed under § 160.170–9 of this subpart, and the welders are appropriately qualified;

(ii) Assuring that the quality-assurance program of the manufacturer is satisfactory;

(iii) Witnessing tests; and

(iv) Taking samples of parts or materials for additional inspections or tests; and

(4) Make available to the Coast Guard inspector the affidavits or invoices from the suppliers of all essential materials used in the production of release mechanisms, together with records identifying the lot or serial numbers of the release mechanisms in which such materials were used.

(d) *Tests*—(1) *Prototype release mechanism readiness.* All tests must be conducted on a complete release mechanism.

(2) *IMO Revised recommendation on testing.* Each prototype release mechanism of each design must pass each of the tests described in IMO Revised recommendation on testing, Part 1, paragraph 8.2 (incorporated by reference, see § 160.170–5). Tests must

be conducted in accordance with these paragraphs of IMO Revised recommendation on testing, Part 1, with the following modifications:

(i) *Visual inspection.* Each release mechanism must be visually inspected to confirm—

(A) Compliance with this subpart;

(B) Conformance with the examined plans; and

(C) Ease of operation and maintenance.

(ii) *Materials.* Steel meeting ASTM A 653 (incorporated by reference, see § 160.170–5) must meet the coating mass and bend tests requirement specified under ASTM A 653 after galvanizing or other anti-corrosion treatment has been applied. This compliance can be ascertained through a supplier's certification or by conducting actual tests.

(iii) *Tensile tests.* The release mechanism hook assembly and supporting structure must be tensile tested in a jig built to load the hook assembly in the same way or ways it would be loaded when used with a liferaft or rescue boat. The hook assembly will be approved for a maximum of one-sixth of the highest load applied.

(iv) *Universal joints.* This test is required if the release mechanism employs universal joints to transmit the release power from the control to the hook release. One of each type and size of universal joint must be set up in a jig with the angles of leads set at 0 (zero), 30, and 60 degrees, respectively. A torque of 540 Nm (400 ft lb) must be applied. This torque must be applied with the connecting rod secured beyond the universal and with the lever arm in the horizontal position. There must be no permanent set, or undue stress, as a result of this test.

(v) *Hydraulic controls.* If the release mechanism includes a fluid power and control system, a test of the hydraulic controls must be conducted in accordance with 46 CFR 58.30–35.

(e) *Test waiver.* The Commandant may waive certain tests for a release mechanism identical in construction to smaller and larger release mechanisms that have successfully completed the tests. However, stress calculations in accordance with § 160.170–9(b) of this subpart must still be submitted. Tests associated with release mechanism components that have already been accepted by the Commandant are not required to be repeated.

(f) At the request of the manufacturer and discretion of the Commandant, an independent laboratory may perform approval inspections and witness approval tests required by this section so long as the inspections and tests are performed and witnessed in accordance with the procedures agreed upon between the independent laboratory and Commandant under 46 CFR part 159, subpart 159.010.

(g) After completion of approval inspections and tests required by this section, the manufacturer must comply with the requirements of 46 CFR 159.005–9(a)(5) by preparing and submitting to the Commandant for review—

(1) The prototype approval test report containing the same information recommended by IMO MSC Circ. 980 (incorporated by reference, see § 160.170–5). The report must include a signed statement by the Coast Guard inspector (or independent laboratory as permitted by paragraph (f) of this section) who witnessed the testing, indicating that the report accurately describes the testing and its results; and

(2) The final plans of the release mechanism as built. The plans must include, in triplicate, the instructions for training and maintenance described in §§ 160.170–19 and 160.170–21 of this subpart, respectively.

(h) The Commandant will review the report and plans submitted under paragraph (g) of this section, and if satisfactory to the Commandant, will approve the plans under 46 CFR 159.005–13.

§ 160.170–15 Production inspections, tests, quality control, and conformance of release mechanisms.

(a) Unless the Commandant directs otherwise, an independent laboratory must conduct inspections, tests, and oversight required by this section. Production inspections and tests of release mechanisms must be carried out in accordance with the procedures for independent laboratory inspection in 46 CFR part 159, subpart 159.007 and in this section unless the Commandant authorizes alternative tests and inspections. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subpart.

(b) *Manufacturer's responsibility.* The manufacturer must—

(1) Institute a quality control procedure to ensure that all production release mechanisms are produced to the same standard, and in the same manner, as the prototype release mechanism approved by the Commandant. The manufacturer's quality control personnel must not work directly under the department or person responsible for either production or sales;

(2) Schedule and coordinate with the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) to ensure that all tests are performed as described in this section;

(3) Submit to the Commandant, a yearly report that contains the following—

(i) Serial number and date of final assembly of each release mechanism constructed;

(ii) The name of the representative of the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section); and

(iii) Serial number and model name of the liferaft or rescue boat with which the release hook is to be used, if known;

(4) Ensure that the arrangement and materials entering into the construction of the release mechanism are in accordance with plans approved under § 160.170–13(h) of this subpart;

(5) Allow an independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) access to any place where materials are stored for the release mechanism, work or testing is performed on release mechanisms or their component parts and materials, or records are retained to meet the requirements of paragraph (c) of this section below, for the purpose of—

(i) Assuring that the quality control program of the manufacturer is satisfactory;

(ii) Witnessing tests; or

(iii) Taking samples of parts or materials for additional inspections or tests; and

(6) Ensure that the independent laboratory (or Coast Guard inspector if required under paragraph (a) of this section) conducts the inspections and witnesses the tests required by paragraph (e) of this section, and further conducts a visual inspection to verify that the release mechanisms are being made in accordance with the plans approved under § 160.170–13(h) of this subpart and the requirements of this subpart.

(c) *Recordkeeping.* The manufacturer must maintain records in accordance with 46 CFR 159.007–13. The manufacturer must keep records of all items listed in this section for at least 5 years from the date of termination of approval of each release mechanism. The records must include—

(1) A copy of this subpart, other CFR sections referenced in this subpart, and each document listed in § 160.170–5 of this subpart;

(2) A copy of the approved plans and documentation;

(3) A current certificate of approval for each approved release mechanism;

(4) Affidavits, certificates, or invoices from the suppliers identifying all essential materials used in the production of approved release mechanisms, together with records identifying the serial numbers of the release mechanisms in which such materials were used;

(5) Records of all structural welding and name of operator(s);

(6) Records of welder certificates, training, and qualifications;

(7) Date and results of calibration of test equipment and the name and address of the company or agency that performed the calibration;

(8) The serial number of each production release gear, along with records of its inspections and tests carried out under this section; and

(9) The original purchaser of each release gear and the vessel on which it was installed, if known.

(d) *Independent laboratory responsibility.* The independent laboratory must perform or witness the inspections and tests under paragraph (e) below for each Coast Guard-approved release mechanism to be installed on a U.S.-flagged vessel. If the manufacturer also produces release mechanisms for approval by other maritime safety administrations, the inspections may be coordinated with inspection visits for those administrations.

(e) *Production inspections and tests.* Each finished release mechanism must be visually inspected. The manufacturer must develop and maintain a visual inspection checklist designed to ensure that all applicable requirements have been met. Each approved release mechanism constructed with non-corrosion resistant steel must be confirmed to have met the coating mass and bend tests requirement specified under ASTM A 653 (incorporated by reference, see § 160.170–5) after galvanizing or other anti-corrosion treatment has been applied. This compliance can be ascertained through a supplier's certification papers or through conducting actual tests.

(f) Each approved release mechanism must pass each of the tests described in IMO Revised recommendation on testing, Part 2, paragraph 6.2 (incorporated by reference, see § 160.170–5). However, each approved release mechanism for installation of a single-fall rescue boat must pass each of the tests described in IMO Revised recommendation on testing, Part 2, paragraph 5.3.1 and 5.3.4.

§ 160.170–17 Marking and labeling.

(a) Each hook body of a release mechanism must be marked with a plate or label permanently affixed in a conspicuous place readily accessible for inspection and sufficiently durable to withstand continuous exposure to environmental conditions at sea for the life of the release mechanism.

(b) The plate or label must be in English, but may also be in other languages.

(c) The plate or label must contain the—

(1) Manufacturer's name and model identification;

(2) Name of the independent laboratory that witnessed the prototype or production tests;

(3) Serial number of the release mechanism;

(4) U.S. Coast Guard approval number;

(5) Month and year of manufacture;

(6) Safe working load of the release mechanism;

(7) Number of the test certificate in accordance with IMO Revised recommendation on testing, Part 2/6.2.2 (incorporated by reference, see § 160.170–5); and

(8) Word "SOLAS."

§ 160.170–19 Operating instructions and information for the ship's training manual.

(a) In order to comply with SOLAS, each release mechanism must have instructions and information for the ship's training manual that use the symbols from IMO Res. A.760(18) (incorporated by reference, see § 160.170–5) to describe the location and operation of the winch.

(b) The instructions and information required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their launching systems.

(c) The release mechanism manufacturer must make the instructions and information required by paragraph (a) of this section available—

(1) In English to purchasers of release mechanisms approved by the Coast Guard; and

(2) In the form of an instruction placard providing simple procedures and illustrations for operation of the release mechanism. The placard must be not greater than 36 cm (14 in) by 51 cm (20 in), and must be made of durable material and suitable for display inside a lifeboat and rescue boat, and near launching apparatuses on vessels.

§ 160.170–21 Operation and maintenance instructions.

(a) Each release mechanism must have operation and maintenance instructions that—

(1) Follows the general format and content specified in IMO MSC.1 Circ. 1205 (incorporated by reference, see § 160.170–5); and

(2) Includes a checklist for use in monthly, external inspections of the release mechanism.

(b) The release mechanism manufacturer must make the manual required by paragraph (a) of this section available in English to purchasers of a release mechanism approved by the Coast Guard.

(c) The operation and maintenance instructions required by paragraph (a) of this section may be combined with similar material for survival craft and rescue boats, and their launching systems.

§ 160.170–23 Procedure for approval of design, material, or construction change.

(a) Each change in design, material, or construction from the plans approved under 46 CFR 159.005–13 and § 160.170–13(h) of this subpart must be approved by the Commandant before being used in any production release mechanism. The manufacturer must submit any such change following the procedures in § 160.170–9 of this subpart, but documentation on items that are unchanged from the plans approved under 46 CFR 159.005–13 and § 160.170–13(h) of this subpart need not be resubmitted.

(b) Unless determined by the Commandant to be unnecessary, a prototype release mechanism with each change described in paragraph (a) of this section must be made and tested according to the procedures for new approvals in §§ 160.170–9 through 160.170–13 of this subpart.

(c) Determinations of equivalence of design, construction, and materials will be made by the Commandant only.

46. Add subpart 160.900 to read as follows:

Subpart 160.900—Preemption

Sec.
160.900–1 Preemption of State or Local law.
160.900–3 [Reserved]

Subpart 160.900—Preemption

§ 160.900–1 Preemption of State or local law.

The regulations in this part have preemptive effect over State or local regulation within the same field.

§ 160.900–3 [Reserved]

PART 164—MATERIALS

47. The authority citation for part 164 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

48. Add subpart 164.017 to read as follows:

Subpart 164.017—Fire Retardant Resins for Lifeboats and Rescue Boats

Sec.
164.017–1 Scope.
164.017–3 Definitions.
164.017–5 Incorporation by reference.
164.017–7 Acceptance criteria.
164.017–9 Procedure for acceptance.
164.017–11 Production quality control requirements.
164.017–13 Marking, labeling, and instructions for use.
164.017–15 Procedure for acceptance of material change.

Subpart 164.017—Fire Retardant Resins for Lifeboats and Rescue Boats

§ 164.017–1 Scope.

This subpart contains performance requirements, acceptance tests, and production testing and inspection requirements for fire retardant resins used in the construction of lifeboats approved under 46 CFR part 160, subpart 160.135 and rescue boats approved under 46 CFR part 160, subpart 160.156.

§ 164.017–3 Definitions.

In this subpart, the term:

Acceptance means certification by the Coast Guard that a component is suitable for use in the manufacture of Coast Guard-approved lifeboats and rescue boats.

Commandant means the Commandant (CG–5214), U.S. COAST GUARD, 2100 2ND ST., SW., STOP 7126, WASHINGTON, DC 20593–7126.

§ 164.017–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at COMMANDANT (CG–5214), U.S. COAST GUARD, 2100 2ND ST., SW., STOP 7126, WASHINGTON, DC 20593–7126 and is available from the sources indicated in this section.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959.

(1) ASTM D 543–06 Standard Test Method for Resistance of Plastics to Chemical Reagents, IBR approved for § 164.017–7 ("ASTM D 543").

(2) ASTM D 570–98(2005) Standard Test Method for Water Absorption of Plastics, IBR approved for § 164.017–7 ("ASTM D 570").

(3) ASTM D 638–08 Standard Test Method for Tensile Properties of Plastics, IBR approved for § 164.017–7 ("ASTM D 638").

(4) ASTM D 695–08 Standard Test Method for Compressive Properties of Rigid Plastics, IBR approved for § 164.017–7 ("ASTM D 695").

(5) ASTM D 790–07e1 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials, IBR approved for § 164.017–7 ("ASTM D 790").

(6) ASTM D 792–08 Standard Test Methods for Density and Specific Gravity (Relative Density) of Plastics by Displacement, IBR approved for § 164.017–7 ("ASTM D 792").

(7) ASTM D 1045–08 Standard Methods of Sampling and Testing Plasticizers used in Plastics, IBR approved for § 164.017–7 ("ASTM D 1045").

(8) ASTM D 1824–95(2002) Standard Test Method for Apparent Viscosity of Plastisols and Organosols at Low Shear Rates, IBR approved for § 164.017–7 ("ASTM D 1824").

(9) ASTM D 2471–99 Standard Test Method for Gel Time and Peak Exothermic Temperature of Reacting Thermosetting Resins, IBR approved for § 164.017–7 ("ASTM D 2471").

(10) ASTM D 2583–07 Standard Test Method for Indentation Hardness of Rigid Plastics by Means of a Barcol Impressor, IBR approved for § 164.017–7 ("ASTM D 2583").

(11) ASTM D 2584–08 Standard Test Method of Ignition Loss for Cured Reinforced Resins, IBR approved for § 164.017–7 ("ASTM D 2584").

(12) ASTM G 154–06 Standard Practice for Operating Fluorescent Light Apparatus for UV Exposure of Nonmetallic Materials, IBR approved for § 164.017–7 ("ASTM G 154–06").

(c) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) MSC Circular 1006, Guidelines On Fire Test Procedures For Acceptance Of Fire-Retardant Materials For The Construction Of Lifeboats, IBR approved for § 164.017–7 ("IMO MSC Circ. 1006").

(2) [Reserved]

(d) International Organization for Standardization (ISO): ISO Central Secretariat [ISO Copyright Office], Case Postale 56, CH–1211 Geneve 20, Switzerland.

(1) ISO 62:2008 Plastics—Determination of water absorption, IBR approved for § 164.017–7 ("ISO 62").

(2) ISO 175:1999 Plastics—Methods of test for the determination of the effects of immersion in liquid chemicals, IBR approved for § 164.017–7 ("ISO 175").

(3) ISO 14125:1998 Fibre-reinforced plastic composites—Determination of flexural properties, IBR approved for § 164.017–7 ("ISO 14125").

(4) ISO 527–1:1993 Plastics—Determination of tensile properties; IBR approved for § 164.017–7 ("ISO 527").

(5) ISO 604:2002 Plastics—Determination of compressive properties, IBR approved for § 164.017–7 ("ISO 604").

(6) ISO 1172:1996 Textile-glass-reinforced plastics—Prepregs, moulding compounds and laminates—Determination of the textile-glass and mineral-filler content—Calcination methods, IBR approved for § 164.017–7 ("ISO 1172").

(7) ISO 1183–1:2004 Plastics—Methods for determining the density of non-cellular plastics-Part 1: Immersion method, liquid pyknometer method and titration method, IBR approved for § 164.017–7 ("ISO 1183").

(8) ISO 1675:1985 Plastics—Liquid resins—Determination of density by the pyknometer method, IBR approved for § 164.017–7 ("ISO 1675").

(9) ISO 2039–1:2001 Determination of hardness—Part 1: Ball indentation method, IBR approved for § 164.017–7 ("ISO 2039–1").

(10) ISO 2039–2:1097 Determination of hardness—Part 1: Rockwell hardness, IBR approved for § 164.017–7 ("ISO 2039–2").

(11) ISO 2114:2000 Plastics (polyester resins) and paints and varnishes (binders)—Determination of partial acid value and total acid value, IBR approved for § 164.017–7 ("ISO 2114").

(12) ISO 2535:2001 Plastics—Unsaturated-polyester resins—Measurement of gel time at ambient temperature, IBR approved for § 164.017–7 ("ISO 2535").

(13) ISO 2555:1989 Plastics—Resins in the liquid state or as emulsions or dispersions—Determination of apparent

viscosity by the Brookfield test method, IBR approved for § 164.017–7 ("ISO 2555").

(e) Military Specifications and Standards, Standardization Order Desk, Building 4D, 700 Robins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/.*

(1) MIL–C–19663D: Cloth, Woven Roving, For Plastic Laminate, 4 AUG 1998, IBR approved for § 164.017–7 ("MIL–C–19663D").

(2) MIL–P–17549D(SH): Plastic Laminates, Fibrous Glass Reinforced, Marine, 31 AUG 1981, IBR approved for § 164.017–7 "(MIL–P–17549D(SH)").

(3) MIL–R–7575 C, Resin, Polyester, Low Pressure Laminating, 29 June 1966, IBR approved for § 164.017–7 ("MIL–R–7575 C").

(4) MIL–R–21607E(SH), Resins, Polyester, Low Pressure Laminating, Fire-Retardant, 25 May 1990, IBR approved for § 164.017–7 ("MIL–R–21607E(SH)").

(5) MIL–R–24719(SH), Resins, Vinyl Ester, Low Pressure Laminating, 4 May 1989, IBR approved for § 164. 017–7 ("MIL–R–24719(SH)").

§ 164.017–7 Acceptance criteria.

(a) The laminating resin must pass the inspections and tests specified in this section. The inspections and tests required by this section, including weathering of samples, are the responsibility of the manufacturer and must be performed by an independent laboratory.

(1) *Polyester resins.* (i) The resin must meet the specifications of Grade A, Class O resin of MIL–R–7575C (incorporated by reference, see § 164.017–5) and meet the specifications conforming to Grade A (standard flame resistance) of MIL–R–21607E(SH) (incorporated by reference, see § 164.017–5).

(ii) MIL–R–21607E(SH) Grade B resins will be given consideration upon request.

(2) *Vinyl ester resins.* The resin must meet the specifications of Grade B (fire retardant) resin of MIL–R–24719(SH) (incorporated by reference, see § 164.017–5) and must be tested and meet the requirements of weathering and post-weathering mechanical testing as shown in Table 164.017–7 of this section. Samples for the weathering must be prepared in accordance with MIL–R–7575C paragraph 4.3.1.1.

(3) *All other resins.* Each resin formulation submitted for Coast Guard approval, other than those addressed in paragraphs (a)(1) and (2) of this section, must be tested and meet the requirements of Table 164.017–7 of this section.

(b) [Reserved]

TABLE 164.017–7—ALTERNATIVE TEST METHOD STANDARDS FOR LAMINATING RESINS FOR USE IN LIFEBOATS, RESCUE BOATS, AND OTHER LIFESAVING EQUIPMENT [1]

Property	Test methods
(c) MATERIAL IDENTIFICATION TESTS [2]	
(1) Uncatalyzed Liquid Resin:	
(i) Specific gravity	ISO 1675 or ASTM D 1045.
(ii) Viscosity	ISO 2555 or ASTM D 1824.
(iii) Acid number	ISO 2114 or ASTM D 1045.
(2) Catalyzed Resin	
(i) Max gel time	ISO 2535 or ASTM D 2471.
(ii) Peak exotherm	ASTM D 2471
(3) Cured Unfilled Resin	
(i) Barcol hardness	ISO 2039 or ASTM D 2583.
(ii) Specific gravity/density	ISO 1183 or ASTM D 792.

Property	Test method	Requirements [3]
(d) LENGTHWISE MECHANICAL & PHYSICAL PROPERTIES OF GLASS CLOTH BASE PLASTIC LAMINATE (Lengthwise direction of test specimens is parallel to the warp direction of glass fabric)		
(1) Tested Under Standard Conditions		
(i) Ultimate strength, flatwise	ISO 14125 or ASTM D 790	345 MPa (50,000 lb/in^2).
(ii) Initial modulus of elasticity, flatwise	ISO 14125 or ASTM D 790	18,616 MPa (2.7 x 10E6 lb/in^2).
(iii) Ultimate tensile strength	ISO 527 or ASTM D 638	278 MPa (40,000 lb/in^2).
(iv) Ultimate compressive strength, edgewise	ISO 604 or ASTM D 695	241 MPa (35,000 ln/in^2).
(v) Fire retardant	MSC Circ. 1006	Pass.
(vi) Water absorption, 24-hour immersion	ISO 62 or ASTM D 570	0.5% max change in weight.
(vii) Barcol hardness	ISO 2039 or ASTM D 2583	55.
(viii) Specific gravity/density	ISO 1183 or ASTM D 792	([2])
(ix) Resin content, percentage	ISO 1172 or ASTM D 2584	([2])
(2) Tested Under Wet Conditions (Specimens must be immersed for 2 hours in boiling distilled water as per ASTM D 570 paragraph 7.5. The specimens must then be cooled in water at 23 °C and tested wet at standard conditions immediately after removal from the water.)		
(i) Ultimate strength, flatwise	ISO 14125 or ASTM D 790	310 MPa (45,000 lb/in^2).
(ii) Initial modulus of elasticity, flatwise	ISO 14125 or ASTM D 790	17,237 MPa (2.5 x 10E6 lb/in^2).
(iii) Ultimate tensile strength	ISO 527 or ASTM D 638	278 MPa (40,000 lb/in^2).
(iv) Ultimate compressive strength, edgewise	ISO 604 or ASTM D 695	241 MPa (35,000 ln/in^2).
(3) Tested Under Elevated Temperature Conditions (Specimens must be exposed to 70 °C for 1 hour and tested at that temperature.)		
(i) Ultimate strength, flatwise	ISO 14125 or ASTM D 790	276 MPa (40,000 lb/in^2).
(ii) Initial modulus of elasticity, flatwise	ISO 14125 or ASTM D 790	15,858 MPa (2.3 x 10E6 lb/in^2).

Property	Test method	Requirements [3]
(4) Tested After Exposure to Liquid Chemicals (Standard test chemical reagents.)		
(i) Change in mass & dimensions	ISO 175 or ASTM D 543	0.1% max.
(ii) Ultimate strength	ISO 14125 or ASTM D 790	([2])
(5) Tested After Weathering (Specimens must be weathered by either: 1 year per MIL–R–7575C or 500-hour exposure per ASTM G154 Table X2.1 Cycle 3.)		
(i) Ultimate strength, flatwise	ISO 14125 or ASTM D 790	310 MPa (45,000 lb/in^2).
(ii) Initial modulus of elasticity, flatwise	ISO 14125 or ASTM D 790	17,237 MPa (2.5 x 10E6 lb/in^2).
(iii) Fire retardant	MSC Circ. 1006	Pass.

[1] Each standard in this table is incorporated by reference, see § 164.017–5.
[2] There are no requirements for these properties, but the values must be determined and reported. Calculations for ultimate flexural strength after immersion in chemical fluids must be based on the dimensions of the specimens before immersion.
[3] The specimens must show no cracking, crazing, softening, delamination, or any other visible deterioration after conditioning exposure or immersions.

§ 164.017–9 Procedure for acceptance.

(a) Fire retardant resin is not subject to formal approval, but will be accepted by the Coast Guard on the basis of this subpart for use in the manufacture of lifesaving equipment. Coast Guard acceptance of fire retardant resin for use in the manufacture of lifesaving equipment does not guarantee Coast Guard acceptance of the manufactured lifesaving equipment.

(b) *Resin manufacturer requirements.* The resin manufacturer must submit the test report, material data sheet, including instructions for use, and quality control procedures in accordance with 46 CFR 159.005–9.

(c) *Independent laboratory requirements.* The independent laboratory must perform each inspection and test required by § 164.017–7 of this subpart, and prepare a report in accordance with 46 CFR 159.005–11 and submit the report to the Commandant for acceptance.

§ 164.017–11 Production quality control requirements.

The resin manufacturer must institute a quality control procedure to ensure that all Coast Guard-accepted resin is produced to the same standard, and in the same manner as the tested resin accepted by the Commandant. The manufacturer's quality control personnel must not work directly under the department or person responsible for either production or sales.

§ 164.017–13 Marking, labeling, and instructions for use.

(a) *Marking and labeling.* Each container for the resin must be permanently marked with at least the following information—

(1) Manufacturer's name or trademark, batch number, date of manufacture, and date of expiration;

(2) Chemical type of the resin;

(3) Maximum usable storage life of the resin (uncatalyzed and catalyzed) and recommended storage conditions;

(4) Maximum allowable shelf life at various temperatures of impregnated fabric before curing; and

(5) Precautionary markings.

(b) Instructions for use must be included with each shipment of approved material and must include—

(1) Recommended mixing and impregnating procedures, including recommended types, percentages, and manner of utilization of catalysts, retardants, and fillers, as applicable;

(2) Range of time, temperature, and pressure cycles recommended to effect the cure for laminates; and

(3) Precautionary information on usage, storage, and handling.

§ 164.017–15 Procedure for acceptance of material change.

(a) Each change in material from the resin accepted under § 164.017–9 of this subpart must be accepted by the Commandant before being used in any production lifeboat or rescue boat. The manufacturer must submit any such change following the procedures set forth in § 164.017–9 of this subpart, but documentation on items that are unchanged from the resin accepted under § 164.017–9 of this subpart need not be resubmitted.

(b) Determinations of equivalence of materials will be made by the Commandant only.

49. Add subpart 164.900 to read as follows:

Subpart 164.900—Preemption

Sec.
164.900–1 Preemption of State or Local law.
164.900–3 [Reserved]

Subpart 164.900—Preemption

§ 164.900–1 Preemption of State or local law.

The regulations in this part have preemptive effect over State or local regulation within the same field.

§ 164.900–3 [Reserved]

PART 180—LIFESAVING EQUIPMENTS AND ARRANGEMENTS

50. The authority citation for part 180 continues to read as follows:

Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

51. In § 180.150, revise paragraph (a) introductory text and add paragraph (c) to read as follows:

§ 180.150 Survival craft embarkation arrangements.

(a) A launching appliance described in paragraph (c) of this section, or a marine evacuation system approved under approval series 160.175, must be provided for each inflatable liferaft and inflatable buoyant apparatus when either—

* * * * *

(c) Each launching appliance for a davit-launched liferaft must include an automatic disengaging apparatus approved under 46 CFR part 160, subpart 160.170 and be either—

(1) A davit approved under 46 CFR part 160, subpart 160.132 for use with a liferaft, with a winch approved under 46 CFR part 160, subpart 160.115 for use with a liferaft; or

(2) A launching appliance approved on or before (EFFECTIVE DATE OF FINAL RULE) under approval series 160.163.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

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

Authority: 46 U.S.C. 3306, 3703; Pub. L 103–206, 107 Stat. 2439; Department of Homeland Security Delegation No. 0170.1.

53. Revise § 199.150(a) to read as follows:

§ 199.150 Survival craft launching and recovery arrangements; general.

(a)(1) Each launching appliance must be approved under 46 CFR part 160, subpart 160.132 for use with the intended craft, with a winch approved under 46 CFR part 160, subpart 160.115 for use with the intended craft.

(2) Each launching appliance for a davit-launched liferaft must include an automatic disengaging apparatus approved under 46 CFR part 160, subpart 160.170 and be either—

(i) A launching appliance described in paragraph (a)(1) of this section; or

(ii) A launching appliance approved on or before (EFFECTIVE DATE OF FINAL RULE) under approval series 160.163.

* * * * *

Dated: August 16, 2010.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

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Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1978, 1982, and 1983

Procedures for the Handling of Retaliation Complaints Under the National Transit Systems Security Act, Federal Railroad Safety Act, Section 219 of the Consumer Product Safety Improvement Act of 2008, the Employee Protection Provision of the Surface Transportation Assistance Act of 1982; Final Rules

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1982

[Docket Number OSHA–2008–0027]

RIN 1218–AC36

Procedures for the Handling of Retaliation Complaints Under the National Transit Systems Security Act and the Federal Railroad Safety Act

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim Final Rule; request for comments.

SUMMARY: This document provides the interim final text of regulations governing the employee protection ("whistleblower") provisions of the National Transit Systems Security Act ("NTSSA"), enacted as Section 1413 of the Implementing Recommendations of the 9/11 Commission Act of 2007 ("9/11 Commission Act"), and the Federal Railroad Safety Act ("FRSA"), as amended by Section 1521 of the 9/11 Commission Act. The 9/11 Commission Act was enacted into law on August 3, 2007. FRSA was amended further by Public Law 110–432, 122 Stat. 4892, Div. A, Title IV, section 419 (Oct. 16, 2008). This rule establishes procedures and time frames for the handling of retaliation complaints under NTSSA and FRSA, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration ("OSHA"), investigations by OSHA, appeals of OSHA determinations to an administrative law judge ("ALJ") for a hearing *de novo,* hearings by ALJs, review of ALJ decisions by the Administrative Review Board ("ARB") (acting on behalf of the Secretary) and judicial review of the Secretary's final decision.

DATES: This interim final rule is effective on August 31, 2010. Comments and additional materials must be submitted (post-marked, sent or received) by November 1, 2010.

ADDRESSES: You may submit comments and additional materials by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0027, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2008–0027). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Nilgun Tolek, Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

NTSSA, enacted as Section 1413 of the 9/11 Commission Act, created employee protection provisions for public transportation agency employees who engage in whistleblowing activities pertaining to public transportation safety or security (or, in circumstances covered by the statutes, employees perceived to have engaged or to be about to engage in protected activity). Section 1521 of the 9/11 Commission Act, which amended FRSA, establishes employee protection provisions for railroad carrier employees who engage in whistleblowing activities pertaining to railroad safety or security (or, in circumstances covered by the statutes, employees perceived to have engaged or to be about to engage in protected activity). The amendments to FRSA also establish whistleblower provisions for railroad carrier employees who are retaliated against for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician, 49 U.S.C. 20109(c)(2). In addition, the FRSA amendments prohibit railroad carriers and other covered persons from denying, delaying, or interfering with the medical or first aid treatment of an employee, and require that an injured employee be promptly transported to the nearest hospital upon request, 49 U.S.C. 20109(c)(1). Section (c)(1) is not a whistleblower provision because it prohibits certain conduct by railroad carriers and other covered persons irrespective of any protected activity by an employee. The procedures established in this interim final rule apply only to the remaining provisions of 49 U.S.C. 20109.

The whistleblower provisions of NTSSA and FRSA each provide that an employee may not seek protection under those provisions and another provision of law for the same allegedly unlawful act of the public transportation agency (under NTSSA) or railroad carrier (under FRSA). 6 U.S.C. 1142(e); 49 U.S.C. 20109(f). The whistleblower provisions of NTSSA and FRSA also provide that nothing in those provisions preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law. 6 U.S.C. 1142(f); 49 U.S.C. 20109(g). The whistleblower provisions of NTSSA and FRSA further provide that nothing in those provisions shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement and that the rights and remedies in the whistleblower provisions of NTSSA or FRSA may not be waived by any agreement, policy, form, or condition of employment. 6 U.S.C. 1142(g); 49 U.S.C. 20109(h).

II. Summary of Statutory Procedures

Prior to the amendment of FRSA, whistleblower retaliation complaints by railroad carrier employees were subject to mandatory dispute resolution pursuant to the Railway Labor Act (45 U.S.C. 151 *et seq.*), which included

whistleblower proceedings before the National Railroad Adjustment Board, as well as other dispute resolution procedures. The amendment changes the procedures for resolution of such complaints and transfers the authority to implement the whistleblower provisions for railroad carrier employees to the Secretary of Labor ("the Secretary").

The procedures for filing and adjudicating whistleblower complaints under NTSSA and FRSA, as amended, are generally the same. NTSSA and FRSA whistleblower provisions include procedures that allow a covered employee to file, within 180 days of the alleged retaliation, a complaint with the Secretary. Upon receipt of the complaint, the Secretary must provide written notice to the person or persons named in the complaint alleged to have violated NTSSA or FRSA ("respondent") of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the respondent throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the respondent an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation.

The Secretary may conduct an investigation only if the complainant has made a prima facie showing that the protected activity was a contributing factor in the adverse action alleged in the complaint and the respondent has not demonstrated, through clear and convincing evidence, that the employer would have taken the same adverse action in the absence of that activity.

After investigating a complaint, the Secretary will issue written findings. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that retaliation has occurred, the Secretary must notify the respondent of those findings, along with a preliminary order which includes all relief necessary to make the employee whole, including, where appropriate: A requirement that the respondent abate the violation; reinstatement with the same seniority status that the employee would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees. The preliminary order may also require payment of punitive damages up to $250,000.

The complainant and the respondent then have 30 days after receipt of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing on the record. The filing of objections under NTSSA or FRSA will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an ALJ is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, NTSSA and FRSA require the hearing to be conducted "expeditiously." The Secretary then has 120 days after the conclusion of a hearing in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the respondent may enter into a settlement agreement which terminates the proceeding. Where the Secretary has determined that a violation has occurred, the Secretary, where appropriate, will assess against the respondent a sum equal to the total amount of all costs and expenses, including attorney's and expert witness fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the Secretary issued the order. Under NTSSA, the Secretary also may award a prevailing employer a reasonable attorney's fee, not exceeding $1,000, if she finds that the complaint is frivolous or has been brought in bad faith.

Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation.

NTSSA and FRSA permit the employee to seek *de novo* review of the complaint by a United States district court in the event that the Secretary has not issued a final decision within 210 days after the filing of the complaint, and there is no showing that the delay is due to the bad faith of the complainant. The provision provides that the court will have jurisdiction over the action without regard to the amount in controversy and that the case will be tried before a jury at the request of either party.

III. Summary and Discussion of Regulatory Provisions

The regulatory provisions in this part have been written and organized to be consistent with other whistleblower regulations promulgated by OSHA to the extent possible within the bounds of the statutory language of NTSSA and FRSA. Responsibility for receiving and investigating complaints under NTSSA and FRSA has been delegated to the Assistant Secretary (Secretary's Order 5–2007, 72 FR 31160 (June 5, 2007)). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by ALJs are decided by the ARB (Secretary's Order 1–2010 (Jan. 15, 2010), 75 FR 3924–01 (Jan. 25, 2010)).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Section 1982.100 Purpose and Scope

This section describes the purpose of the regulations implementing NTSSA and FRSA and provides an overview of the procedures covered by these regulations.

Section 1982.101 Definitions

This section includes general definitions applicable to the employee protection provisions of NTSSA and FRSA.

The definition section of NTSSA, 6 U.S.C. 1131(5), defines "public transportation agency" as "a publicly owned operator of public transportation eligible to receive Federal assistance under chapter 53 of title 49." Chapter 53 of title 49, 49 U.S.C. 5302(a)(10), defines "public transportation" as "transportation by a conveyance that provides regular and continuous general or special transportation to the public, but does not include school buses, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity)." Chapter 243, 49 U.S.C. 24301, governs Amtrak.

The definition section of FRSA, 49 U.S.C. 20102(2), defines "railroad carrier" as "a person providing railroad transportation." The definition section of FRSA, 49 U.S.C. 20102(1), defines "railroad" as "any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the

general railroad system of transportation."

Section 1982.102 Obligations and Prohibited Acts

This section describes the activities that are protected under NTSSA and FRSA, and the conduct that is prohibited in response to any protected activities.

Section 1982.103 Filing of Retaliation Complaints

This section explains the requirements for filing a retaliation complaint under NTSSA and FRSA. To be timely, a complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the retaliatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Employment Opportunity Commission* v. *United Parcel Service,* 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints filed under NTSSA or FRSA need not be in any particular form. They may be either oral or in writing. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. With the consent of the employee, complaints may be filed by any person on the employee's behalf.

Section 1982.104 Investigation.

This section describes the procedures that apply to the investigation of NTSSA and FRSA complaints. Paragraph (a) of this section outlines the procedures for notifying the parties and appropriate Federal agencies of the complaint and notifying the respondent of its rights under these regulations. Paragraph (b) describes the procedures for the respondent to submit its response to the complaint. Paragraph (c) addresses disclosure to the complainant of respondent's submissions to the agency that are responsive to the complaint. Paragraph (d) of this section discusses confidentiality of information provided during investigations. Paragraph (e) of this section sets forth NTSSA's and FRSA's statutory burdens of proof. FRSA adopts the burdens of proof provided under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR21"), 49 U.S.C. 42121, which are the same as those provided under NTSSA. Therefore, this paragraph generally conforms to the similar provision in the regulations implementing AIR21. Paragraph (f) describes the procedures the Assistant Secretary will follow prior to the issuance of findings and a preliminary order when the Assistant Secretary has reasonable cause to believe that a violation has occurred.

All these statutes require that a complainant make an initial prima facie showing that the complainant engaged in protected activity that was "a contributing factor" in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity (or, in circumstances covered by the statutes, that the respondent perceived the employee to have engaged or to be about to engage in protected activity), and that the protected activity (or the perception thereof) was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse action took place shortly after the protected activity, giving rise to the inference that it was a contributing factor in the adverse action.

If the complainant does not make the prima facie showing, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the whistleblower provisions of Section 211 of the Energy Reorganization Act of 1974, as amended, ("ERA"), 42 U.S.C. 5851, which is the same as that under AIR21 and the Surface Transportation Assistance Act of 1982 ("STAA"), 49 U.S.C. 31105, served a "gatekeeping function" that "stemm[ed] frivolous complaints"). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer "demonstrates, by clear and convincing evidence," that it would have taken the same adverse action in the absence of the protected activity. Thus, the Secretary must dismiss a complaint under NTSSA or FRSA and not investigate (or cease investigating) if either: (1) The complainant fails to meet the prima facie showing that protected activity was a contributing factor in the adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the statutory burdens of proof require an employee to prove that the alleged protected activity was a "contributing factor" to the alleged adverse action. A contributing factor is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)). In proving that protected activity was a contributing factor in the adverse action, "a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail," because a complainant alternatively can prevail by showing that the respondent's "'reason, while true, is only one of the reasons for its conduct,'" and that another reason was the complainant's protected activity. *See Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* No. 04–149, 2006 WL 3246904, at *13 (ARB May 31, 2006) (discussing contributing factor test under the whistleblower provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 ("SOX"), 18 U.S.C. 1514A) (citing *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)).

The NTSSA burdens of proof, and the AIR21 burdens of proof which the FRSA now incorporates, do not address the evidentiary standard that applies to a complainant's proof that protected activity was a contributing factor in an adverse action. NTSSA and AIR21 simply provide that the Secretary may find a violation only "if the complainant demonstrates" that protected activity was a contributing factor in the alleged adverse action. *See* 6 U.S.C. 1142(c)(2)(B)(iii) and 49 U.S.C. 42121(b)(2)(B)(iii). It is the Secretary's position that the complainant must prove by a "preponderance of the evidence" that his or her protected activity contributed to the adverse action; otherwise, the burden never shifts to the employer to establish its defense by "clear and convincing evidence." *See, e.g., Allen* v. *Admin. Review Bd.,* 514 F.3d 468, 475 n. 1 (5th Cir. 2008) ("The term 'demonstrate' [under 42121(b)(2)(B)(iii)] means to prove by a preponderance of the evidence."). Once the complainant establishes that the protected activity was a contributing factor in the adverse action, the employer can escape liability only by proving by clear and convincing

evidence that it would have reached the same decision even in the absence of the prohibited rationale. The "clear and convincing evidence" standard is a higher burden of proof than the "preponderance of the evidence" standard.

Section 1982.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, written findings regarding whether or not there is reasonable cause to believe that the complaint has merit. If the findings are that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate relief, including preliminary reinstatement. The findings and, where appropriate, preliminary order, advise the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing. The findings and, where appropriate, preliminary order, also advise the respondent of the right under NTSSA to request attorney's fees from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final findings and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he received prior to his termination, but not actually return to work. Such "economic reinstatement" frequently is employed in cases arising under Section 105(c) of the Federal Mine Safety and Health Act of 1977. *See, e.g., Secretary of Labor on behalf of York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (June 26, 2001). Congress intended that employees be preliminarily reinstated to their positions if OSHA finds reasonable cause that they were discharged in violation of NTSSA or FRSA. When a violation is found, the norm is for OSHA to order immediate preliminary reinstatement. An employer does not have a statutory right to choose economic reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's satisfaction that reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the employee. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the employee continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating an employee should the employer ultimately prevail in the whistleblower adjudication.

Subpart B—Litigation

Section 1982.106 Objections to the Findings and the Preliminary Order and Request for a Hearing

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001 within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or e-mail communication is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record, as well as the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* No. 04–101, 2005 WL 2865915, at *7 (ARB Oct. 31, 2005).

Section 1982.107 Hearings

This section adopts the rules of practice and evidence of the Office of Administrative Law Judges at 29 CFR part 18. The section specifically provides for consolidation of hearings if both the complainant and respondent object to the findings and/or order of the Assistant Secretary. Otherwise, this section does not address procedural issues, *e.g.,* place of hearing, right to counsel, procedures, evidence and record of hearing, oral arguments and briefs, and dismissal for cause, because the Office of Administrative Law Judges has adopted its own rules of practice that cover these matters.

Section 1982.108 Role of Federal Agencies

Under NTSSA and FRSA, it is not expected that the Secretary ordinarily will appear as a party in the proceeding. The Secretary has found that in most whistleblower cases, parties have been ably represented and the public interest has not required the Department's participation. Nevertheless, the Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ; petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the ARB proceeding. Although we anticipate that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Department of Transportation and the Department of Homeland Security, at those agencies' discretion, also may participate as amicus curiae at any time in the proceedings.

Section 1982.109 Decision and Orders of the Administrative Law Judge

This section sets forth the content of the decision and order of the ALJ, and includes the standard for finding a violation under NTSSA or FRSA. The section further provides that the Assistant Secretary's determination to dismiss the complaint without an investigation or without a complete investigation pursuant to section 1982.104 is not subject to review. Thus, paragraph (c) of section 1982.109 clarifies that the Assistant Secretary's determinations on whether to proceed with an investigation under NTSSA or FRSA and whether to make particular investigative findings under either of the statutes subject to this part are discretionary decisions not subject to review by the ALJ. The ALJ hears cases *de novo* and, therefore, as a general matter, may not remand cases to the

Assistant Secretary to conduct an investigation or make further factual findings. A full discussion of the burdens of proof used by the Department of Labor to resolve whistleblower cases under this part is set forth above in the discussion of section 1982.104.

Section 1982.110 Decision and Orders of the Administrative Review Board

Upon the issuance of the ALJ's decision, the parties have 10 business days within which to petition the ARB for review of that decision. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing of the petition; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The appeal provisions in this part provide that an appeal to the ARB is not a matter of right but is accepted at the discretion of the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If a timely petition for review is filed with the ARB, any relief ordered by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. When the ARB accepts a petition for review, the ALJ's factual determinations will be reviewed under the substantial evidence standard.

This section also provides that in the exceptional case, the ARB may grant a motion to stay an ALJ's preliminary order of reinstatement under NTSSA or FRSA, which otherwise would be effective, while review is conducted by the ARB. The Secretary believes that a stay of an ALJ's preliminary order of reinstatement under NTSSA or FRSA would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public favors a stay.

Subpart C—Miscellaneous Provisions

Section 1982.111 Withdrawal of Complaints, Objections, and Petitions for Review; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, the withdrawal of objections to findings and/or orders, and the withdrawal of petitions for review. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Section 1982.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the ARB to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1982.113 Judicial Enforcement

This section describes the Secretary's power under NTSSA and FRSA to obtain judicial enforcement of orders and the terms of a settlement agreement.

FRSA expressly authorizes district courts to enforce orders, including preliminary orders of reinstatement, issued by the Secretary under 49 U.S.C. 20109(d)(2)(A) (adopting the rules and procedures set forth in AIR21, 49 U.S.C. 42121(b)). *See* 49 U.S.C. 20109(d)(2)(A)(iii) ("If a person fails to comply with an order issued by the Secretary of Labor pursuant to the procedures in section 42121(b), the Secretary of Labor may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred, as set forth in 42121."). FRSA permits the Secretary to bring an action to obtain such enforcement. *See* 49 U.S.C. 20109(d)(2)(A)(iii). However, there is no provision in FRSA permitting the person on whose behalf the order was issued to bring such an action.

NTSSA gives district courts authority to enforce orders, including preliminary reinstatement orders, issued by the Secretary. Specifically, reinstatement orders issued under subsection (c)(3) are immediately enforceable in district court under 6 U.S.C. 1142(c)(5) and (6). Subsections 1142(c)(3)(B)(ii) and (d)(2)(A) provide that the Secretary shall order the person who has committed a violation to reinstate the complainant to his or her former position. Subsection 1142(c)(2)(A) instructs the Secretary to accompany any reasonable cause finding that a violation occurred with a preliminary order containing the relief prescribed by subsection (c)(3)(B), which includes reinstatement. *See* 6 U.S.C. 1142(c)(3)(B)(ii) and (d)(2)(A). Subsection (c)(2)(A) also declares that the subsection (c)(3)(B)'s relief of reinstatement contained in a preliminary order is not stayed upon the filing of objections. 6 U.S.C. 1142(c)(2)(A) ("The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order.") Thus, under the statute, enforceable orders issued under subsection (c)(3)(B) include preliminary orders that contain the relief of reinstatement prescribed by subsection (c)(3)(B) and (d)(2)(A). This statutory interpretation is consistent with the Secretary's interpretation of similar language in AIR21 and SOX. *But see Bechtel* v. *Competitive Technologies, Inc.,* 448 F.3d 469 (2d Cir. 2006); *Welch* v. *Cardinal Bankshares Corp.,* 454 F. Supp. 2d 552 (W.D. Va. 2006) (decision vacated, appeal dismissed, No. 06–2995 (4th Cir. Feb. 20, 2008)). NTSSA also permits the person on whose behalf the order was issued under NTSSA to obtain judicial enforcement of orders and the terms of a settlement agreement.

Section 1982.114 District Court Jurisdiction of Retaliation Complaints

This section sets forth NTSSA's and FRSA's respective provisions allowing a complainant to bring an original *de novo* action in district court, alleging the same allegations contained in the complaint filed with OSHA, if there has been no final decision of the Secretary within 210 days of the filing of the complaint and there is no delay due to the complainant's bad faith. It requires complainants to provide notice 15 days in advance of their intent to file a complaint in district court.

It is the Secretary's position that complainants may not initiate an action in Federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the complaint. The purpose of the "kick-out" provisions is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals.

Section 1982.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and notice to the parties, waive any rule as justice or the administration of NTSSA or FRSA requires.

IV. Paperwork Reduction Act

This rule does not contain a reporting provision that is subject to review by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

The notice and comment rulemaking procedures of Section 553 of the Administrative Procedure Act ("APA") do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). This is a rule of agency procedure and practice within the meaning of that section. Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments is not required for these regulations, which provide procedures for the handling of retaliation complaints. Although this is a procedural rule not subject to the notice and comment procedures of the APA, we are providing persons interested in this interim final rule 60 days to submit comments. A final rule will be published after the Department receives and carefully reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this interim final rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a "significant regulatory action" within the meaning of Section 3(f)(4) of Executive Order 12866 because the NTSSA and FRSA whistleblower provisions are new or substantially new programs. Executive Order 12866 requires a full economic impact analysis only for "economically significant" rules, which are defined in Section 3(f)(1) as rules that may "have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a "rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(3)(C)), and does not require Congressional review. Finally, this rule does not have "federalism implications." The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of NTSSA and amendments of FRSA. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1982

Administrative practice and procedure, Employment, Homeland security, Investigations, Mass transportation, Reporting and recordkeeping requirements, Public transportation, Railroads, Safety, Transportation, Whistleblowing.

Signed at Washington, DC, August 19, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble, 29 CFR part 1982 is added to read as follows:

PART 1982—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE NATIONAL TRANSIT SYSTEMS SECURITY ACT OF 2007, ENACTED AS SECTION 1413 OF THE IMPLEMENTING RECOMMENDATIONS OF THE 9/11 COMMISSION ACT OF 2007, AND THE FEDERAL RAILROAD SAFETY ACT, AS AMENDED BY SECTION 1521 OF THE IMPLEMENTING RECOMMENDATIONS OF THE 9/11 COMMISSION ACT OF 2007

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

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1982.113 Judicial enforcement.
1982.114 District court jurisdiction of retaliation complaints.
1982.115 Special circumstances; waiver of rules.

Authority: 6 U.S.C. 1142 and 49 U.S.C. 20109; Secretary of Labor's Order No. 5–2007, 72 FR 31160 (June 5, 2007); Secretary of Labor's Order No. 1–2010 (Jan. 15, 2010), 75 FR 3924–01 (Jan. 25, 2010).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1982.100 Purpose and scope.

(a) This part implements procedures of NTSSA, 6 U.S.C. 1142, and FRSA, 49 U.S.C. 20109, as amended. NTSSA provides for employee protection from retaliation because the employee has engaged in protected activity pertaining to public transportation safety or

security (or, in circumstances covered by the statutes, the employee is perceived to have engaged or to be about to engage in protected activity). FRSA provides for employee protection from retaliation because the employee has engaged in protected activity pertaining to railroad safety or security (or, in circumstances covered by the statutes, the employee is perceived to have engaged or to be about to engage in protected activity), has requested medical or first aid treatment, or has followed orders or a treatment plan of a treating physician.

(b) This part establishes procedures pursuant to NTSSA and FRSA for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf. These rules, together with those codified at 29 CFR part 18, set forth the procedures for submission of complaints under NTSSA or FRSA, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1982.101 Definitions.

(a) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under NTSSA or FRSA.

(b) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(c) *Complainant* means the employee who filed a NTSSA or FRSA complaint or on whose behalf a complaint was filed.

(d) *Employee* means an individual presently or formerly working for, an individual applying to work for, or an individual whose employment could be affected by a public transportation agency or a railroad carrier, or a contractor or subcontractor of a public transportation agency or a railroad carrier.

(e) *FRSA* means Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–053, August 3, 2007, as further amended by Public Law 110–432, October, 16, 2008, codified at 49 U.S.C. 20109.

(f) *NTSSA* means Section 1413 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–053, August 3, 2007, codified at 6 U.S.C. 1142.

(g) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(h) *Public transportation* means transportation by a conveyance that provides regular and continuous general or special transportation to the public, but does not include school buses, charter, or intercity bus transportation or intercity passenger rail transportation provided by Amtrak.

(i) *Public transportation agency* means a publicly owned operator of public transportation eligible to receive Federal assistance under 49 U.S.C. chapter 53.

(j) *Railroad* means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979 and high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(k) *Railroad carrier* means a person providing railroad transportation.

(l) *Respondent* means the person alleged to have violated NTSSA or FRSA.

(m) *Secretary* means the Secretary of Labor or person to whom authority under NTSSA or FRSA has been delegated.

(n) Any future statutory amendments that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1982.102 Obligations and prohibited acts.

(a) *National Transit Systems Security Act.* (1) A public transportation agency, contractor, or subcontractor of such agency, or officer or employee of such agency shall not discharge, demote, suspend, reprimand, or in any other way discriminate against, including but not limited to intimidating, threatening, restraining, coercing, blacklisting, or disciplining an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(i) To provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to public transportation safety or security, or fraud, waste, or abuse of Federal grants or other public funds intended to be used for public transportation safety or security, if the information or assistance is provided to, or an investigation stemming from the provided information is conducted by—

(A) A Federal, State or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Pub. L. 95–452));

(B) Any Member of Congress, any Committee of Congress, or the Government Accountability Office; or

(C) A person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(ii) To refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to public transportation safety or security;

(iii) To file a complaint or directly cause to be brought a proceeding related to the enforcement of this section or to testify in that proceeding;

(iv) To cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(v) To furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with public transportation.

(2)(i) A public transportation agency, contractor, or subcontractor of such agency, or officer or employee of such agency shall not discharge, demote, suspend, reprimand, or in any other way discriminate against, including but not limited to intimidating, threatening, restraining, coercing, blacklisting, or disciplining an employee for—

(A) Reporting a hazardous safety or security condition;

(B) Refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (a)(2)(ii) of this section exist; or

(C) Refusing to authorize the use of any safety- or security-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or

structures are in a hazardous safety or security condition, if the conditions described in paragraph (a)(2)(ii) of this section exist.

(ii) A refusal is protected under paragraph (a)(2)(i)(B) and (C) of this section if—

(A) The refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) A reasonable individual in the circumstances then confronting the employee would conclude that—

(*1*) The hazardous condition presents an imminent danger of death or serious injury; and

(*2*) The urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

(C) The employee, where possible, has notified the public transportation agency of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(iii) In paragraph (a)(2)(ii) of this section, only paragraph (a)(2)(ii)(A) shall apply to security personnel, including transit police, employed or utilized by a public transportation agency to protect riders, equipment, assets, or facilities.

(b) *Federal Railroad Safety Act.* (1) A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against, including but not limited to intimidating, threatening, restraining, coercing, blacklisting, or disciplining an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(i) To provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) A Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Pub. L. 95–452));

(B) Any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) A person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(ii) To refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to railroad safety or security;

(iii) To file a complaint, or directly cause to be brought a proceeding related to the enforcement of 49 U.S.C. part A of subtitle V or, as applicable to railroad safety or security, 49 U.S.C. chapter 51 or 57, or to testify in that proceeding;

(iv) To notify, or attempt to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

(v) To cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board;

(vi) To furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or

(vii) To accurately report hours on duty pursuant to 49 U.S.C. chapter 211.

(2)(i) A railroad carrier engaged in interstate or foreign commerce, or an officer or employee of such a railroad carrier, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against, including but not limited to intimidating, threatening, restraining, coercing, blacklisting, or disciplining an employee for—

(A) Reporting, in good faith, a hazardous safety or security condition;

(B) Refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee's duties, if the conditions described in paragraph (b)(2)(ii) of this section exist; or

(C) Refusing to authorize the use of any safety-related equipment, track, or structures, if the employee is responsible for the inspection or repair of the equipment, track, or structures, when the employee believes that the equipment, track, or structures are in a hazardous safety or security condition, if the conditions described in paragraph (b)(2)(ii) of this section exist.

(ii) A refusal is protected under paragraphs (b)(2)(i)(B) and (C) of this section if—

(A) The refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) A reasonable individual in the circumstances then confronting the employee would conclude that—

(*1*) The hazardous condition presents an imminent danger of death or serious injury; and

(*2*) The urgency of the situation does not allow sufficient time to eliminate the danger without such refusal; and

(C) The employee, where possible, has notified the railroad carrier of the existence of the hazardous condition and the intention not to perform further work, or not to authorize the use of the hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(iii) In paragraph (b)(2)(ii) of this section, only paragraph (b)(2)(ii)(A) shall apply to security personnel employed by a railroad carrier to protect individuals and property transported by railroad.

(3) A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier may not discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician, except that—

(i) A railroad carrier's refusal to permit an employee to return to work following medical treatment shall not be considered a violation of FRSA if the refusal is pursuant to Federal Railroad Administration medical standards for fitness of duty or, if there are no pertinent Federal Railroad Administration standards, a carrier's medical standards for fitness for duty.

(ii) For purposes of this paragraph, the term "discipline" means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee's record.

§ 1982.103 Filing of retaliation complaints.

(a) *Who may file.* An employee who believes that he or she has been retaliated against by an employer in violation of NTSSA or FRSA may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If a complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for Filing.* Within 180 days after an alleged violation of NTSSA or FRSA occurs, an employee who believes that he or she has been retaliated against in violation of NTSSA or FRSA may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

§ 1982.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint by providing a copy of the complaint, redacted, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws, and will also notify the respondent of its rights under paragraphs (b) and (f) of this section and paragraph (e) of § 1982.110. The Assistant Secretary will provide a copy of the unredacted complaint to the complainant (or to the complainant's legal counsel, if complainant is represented by counsel), and to the Federal Railroad Administration, the Federal Transit Administration, or the Transportation Security Administration as appropriate.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with the Assistant Secretary to present its position.

(c) Throughout the investigation, the agency will provide to the complainant (or the complainant's legal counsel if complainant is represented by counsel) a copy of all of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint. Before providing such materials to the complainant, the agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of title 29 of the Code of Federal Regulations.

(e)(1) A complaint of alleged violation will be dismissed unless the complainant has made a prima facie showing that protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity (or, in circumstances covered by the statutes, was perceived to have engaged or to be about to engage in protected activity);

(ii) The respondent knew or suspected, actually or constructively, that the employee engaged in the protected activity (or, in circumstances covered by the statutes, perceived the employee to have engaged or to be about to engage in protected activity);

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity (or perception thereof) was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity (or, in circumstances covered by the statutes, perceived the employee to have engaged or to be about to engage in protected activity), and that the protected activity (or perception thereof) was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse action took place shortly after the protected activity, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint will not be conducted or will be discontinued if the respondent, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set for in the prior paragraph, the Assistant Secretary will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1982.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated NTSSA or FRSA and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the respondent (or the respondent's legal counsel if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The respondent will be given the opportunity to submit a written response, to meet with the investigators, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon thereafter as the Assistant Secretary and the respondent can agree, if the interests of justice so require.

§ 1982.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of NTSSA or FRSA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will include, where appropriate: a requirement that the respondent abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred. It may also include payment of punitive damages up to $250,000.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent under NTSSA to request attorney's fees not exceeding $1,000 from the administrative law judge ("ALJ") regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith, and will also give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and the preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel) or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for a hearing has been timely filed as provided at § 1982.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the findings and/or order.

Subpart B—Litigation

§ 1982.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees up to $1,000 under NTSSA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to paragraph (b) of § 1982.105. The objections, request for a hearing, and/or request for attorney's fees must in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001 and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Judges for a stay of the Assistant Secretary's preliminary order of reinstatement. If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order will become the final decision of the Secretary, not subject to judicial review.

§ 1982.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure, and the rules of evidence, for administrative hearings before the Office of Administrative Law Judges, codified at part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo* and on the record.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

§ 1982.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Copies of documents in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, as well as all other parties.

(b) The Department of Homeland Security or the Department of Transportation, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at the agency's discretion. At the request of the interested Federal agency, copies of all pleadings in a case must be sent to the Federal agency, whether or not the agency is participating in the proceeding.

§ 1982.109 Decision and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that

protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected behavior.

(c) Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1982.104(e) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the order will direct the respondent to take appropriate affirmative action to make the employee whole, including, where appropriate: a requirement that the respondent abate the violation; reinstatement with the same seniority status that the employee would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees. The order may also include payment of punitive damages up to $250,000.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint filed under NTSSA was frivolous or was brought in bad faith, the ALJ may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board ("ARB").

§ 1982.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint under NTSSA was frivolous or brought in bad faith who seeks an award of attorney's fees up to $1,000, must file a written petition for review with the ARB, U.S. Department of Labor (200 Constitution Avenue, NW., Washington, DC 20210), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the ARB and the ARB accepts the petition for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 10 business days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim, in which case the conclusion of the hearing is the date the motion for reconsideration is denied or ten business days after a new decision is issued. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision also will be served on the Assistant Secretary, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the final order will order the respondent to take appropriate affirmative action to make the employee whole, including, where appropriate: a requirement that the respondent abate the violation; reinstatement with the same seniority status that the employee would have had but for the retaliation; back pay with interest; and compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees. The order also may include payment of punitive damages up to $250,000.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint under NTSSA was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1982.111 Withdrawal of complaints, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint under NTSSA or FRSA by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary then will determine whether to approve the withdrawal. The Assistant Secretary will notify the respondent (or the respondent's legal counsel if respondent is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for

approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and preliminary order.

(b) The Assistant Secretary may withdraw his or her findings and/or a preliminary order at any time before the expiration of the 30-day objection period described in § 1982.106, provided that no objection yet has been filed, and substitute new findings and/or a preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw its objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If a case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant, and the respondent agree to a settlement. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates his or her consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced pursuant to § 1982.113.

§ 1982.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1982.109 and 1982.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order of the ARB is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of the court.

§ 1982.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under NTSSA, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. Whenever a person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under FRSA, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. In such civil actions under NTSSA and FRSA, the district court will have jurisdiction to grant all appropriate relief, including, but not limited to, injunctive relief and compensatory damages, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the retaliation;

(2) The amount of back pay, with interest; and

(3) Compensation for any special damages sustained as a result of the retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees.

§ 1982.114 District Court jurisdiction of retaliation complaints.

(a) If there is no final order of the Secretary, 210 days have passed since the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

(b) Fifteen days in advance of filing a complaint in Federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending upon where the proceeding is pending, a notice of his or her intention to file such complaint. The notice must be served on all parties to the proceeding. A copy of the notice must be served on the Regional Administrator, the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. The complainant shall file and serve a copy of the district court complaint on the above as soon as possible after the district court complaint has been filed with the court.

§ 1982.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders that justice or the administration of NTSSA or FRSA requires.

[FR Doc. 2010–21128 Filed 8–30–10; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1983

[Docket Number OSHA–2010–0006]

RIN 1218–AC47

Procedures for the Handling of Retaliation Complaints Under Section 219 of the Consumer Product Safety Improvement Act of 2008

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim Final rule; request for comments.

SUMMARY: This document provides the interim final text of regulations

governing the employee protection (or "whistleblower") provisions of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). This rule establishes procedures and time frames for the handling of retaliation complaints under CPSIA, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration ("OSHA"), investigations by OSHA, appeals of OSHA determinations to an administrative law judge ("ALJ") for a hearing *de novo,* hearings by ALJs, review of ALJ decisions by the Administrative Review Board ("ARB") (acting on behalf of the Secretary) and judicial review of the Secretary's final decision.

DATES: This interim final rule is effective on August 31, 2010. Comments and additional materials must be submitted (post-marked, sent or received) by November 1, 2010.

ADDRESSES: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0006, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2010–0006). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Nilgun Tolek, Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Product Safety Improvement Act of 2008 ("CPSIA" or "the Act"), Public Law 110–314, was enacted on August 14, 2008. Section 219 of the Act, codified at 15 U.S.C. 2087, provides protection to employees against retaliation by a manufacturer, private labeler, distributor, or retailer, because they provided to their employer, the Federal Government or the attorney general of a State, information relating to any violation of, or any act or omission the employees reasonably believe to be a violation of, any provision of an Act enforced by the Consumer Product Safety Commission ("Commission"), or any order, rule, regulation, standard, or ban under any such Act. The statutes enforced by the Commission include the Consumer Product Safety Act ("CPSA"), as amended by the CPSIA (15 U.S.C. 2051 *et seq.*), the Children's Gasoline Burn Prevention Act (Pub. L. 110–278, 122 Stat. 2602 (2008)), the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*), the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*), the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*), and the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. 8001 *et seq.*). These rules establish procedures for the handling of whistleblower complaints under CPSIA.

II. Summary of Statutory Procedures

CPSIA's whistleblower provisions include procedures that allow a covered employee to file, within 180 days of the alleged retaliation, a complaint with the Secretary of Labor ("the Secretary"). Upon receipt of the complaint, the Secretary must provide written notice to the person or persons named in the complaint alleged to have violated the Act ("respondent") of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the respondent throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the respondent an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation.

The Secretary may conduct an investigation only if the complainant has made a prima facie showing that the protected activity was a contributing factor in the adverse action alleged in the complaint and the respondent has not demonstrated, through clear and convincing evidence, that the employer would have taken the same adverse action in the absence of that activity.

After investigating a complaint, the Secretary will issue written findings. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that retaliation has occurred, the Secretary must notify the respondent of those findings, along with a preliminary order that requires the respondent to: take affirmative action to abate the violation; reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant, as well as costs and attorney's and expert witness fees reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

The complainant and the respondent then have 30 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing before an ALJ. The filing of objections under CPSIA will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an ALJ is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, CPSIA requires the hearing to be conducted "expeditiously." The Secretary then has 120 days after the conclusion of any hearing in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the respondent may enter into a settlement agreement that terminates the proceeding. Where the Secretary has determined that a violation has occurred, the Secretary, where

appropriate, will assess against the respondent a sum equal to the total amount of all costs and expenses, including attorney's and expert witness fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the Secretary issued the order. The Secretary also may award a prevailing employer a reasonable attorney's fee, not exceeding $1,000, if the Secretary finds that the complaint is frivolous or has been brought in bad faith. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation.

CPSIA permits the employee to seek *de novo* review of the complaint by a United States district court in the event that the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination. The provision provides that the court will have jurisdiction over the action without regard to the amount in controversy and that the case will be tried before a jury at the request of either party.

III. Summary and Discussion of Regulatory Provisions

The regulatory provisions in this part have been written and organized to be consistent with other whistleblower regulations promulgated by OSHA to the extent possible within the bounds of the statutory language of CPSIA. Responsibility for receiving and investigating complaints under CPSIA also has been delegated to the Assistant Secretary (Secretary's Order 5–2007, 72 FR 31160, June 5, 2007). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the ARB (Secretary's Order 1–2010 (Jan. 15, 2010), 75 FR 3924–01, (Jan. 25, 2010)).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Section 1983.100 Purpose and Scope

This section describes the purpose of the regulations implementing CPSIA and provides an overview of the procedures covered by these regulations.

Section 1983.101 Definitions

This section includes general definitions from the CPSA, which are applicable to the whistleblower provisions of the CPSIA, including a definition of the term "consumer product." *See* 15 U.S.C. 2052(a)(5). The CPSA defines "distributor" as "a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product." 15 U.S.C. 2052(a)(8). The CPSA defines "manufactured" as "to manufacture, produce, or assemble," and defines "manufacturer" as "any person who manufactures or imports a consumer product." 15 U.S.C. 2052(a)(10) and (11), respectively. "Private labeler" is defined by the CPSA as "an owner of a brand or trademark on the label of a consumer product which bears a private label." 15 U.S.C. 2052(a)(12). Section 2052(a)(12)(B) further provides that a "consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label." 15 U.S.C. 2052(a)(12)(B). The CPSA defines "retailer" as "a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer." 15 U.S.C. 2052(a)(13).

Section 1983.102 Obligations and Prohibited Acts

This section describes the activities that are protected under CPSIA, and the conduct that is prohibited in response to any protected activities. For purposes of § 1983.102(c), the ARB has interpreted the phrase "deliberate violations" for the purpose of denying protection to an employee under the Energy Reorganization Act's similar provision as including an element of willfulness. *See Fields* v. *U.S. Dep't of Labor, Admin. Review Bd.,* 173 F.3d 811, 814 (11th Cir. 1999) (petitioners knowingly conducted unauthorized and potentially dangerous experiments).

Section 1983.103 Filing of Retaliation Complaint

This section explains the requirement for filing a retaliation complaint under CPSIA. To be timely, a complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the retaliatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Employment Opportunity Commission* v. *United Parcel Service,* 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints filed under CPSIA need not be in any particular form. They may be either oral or in writing. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. With the consent of the employee, complaints may be filed by any person on the employee's behalf.

Section 1983.104 Investigation

This section describes the procedures that apply to the investigation of CPSIA complaints. Paragraph (a) of this section outlines the procedures for notifying the parties and the Consumer Product Safety Commission of the complaint and notifying the respondent of its rights under these regulations. Paragraph (b) describes the procedures for the respondent to submit its response to the complaint. Paragraph (c) addresses disclosure to the complainant of respondent's submissions to the agency that are responsive to the complaint. Paragraph (d) of this section discusses confidentiality of information provided during investigations. Paragraph (e) of this section sets forth CPSIA's statutory burdens of proof. Paragraph (f) describes the procedures the Assistant Secretary will follow prior to the issuance of findings and a preliminary order when the Assistant Secretary has reasonable cause to believe that a violation has occurred.

The statute requires that a complainant make an initial prima facie showing that protected activity was "a contributing factor" in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. If the complainant does not make the prima facie showing, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the ERA, which is the same as that under CPSIA, served a "gatekeeping function" that "stemm[ed] frivolous complaints"). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer "demonstrates, by clear and convincing evidence," that it would have taken the same adverse action in the absence of the protected activity. Thus, the

Secretary must dismiss a complaint under CPSIA and not investigate (or cease investigating) if either: (1) The complainant fails to meet the prima facie showing that protected activity was a contributing factor in the adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the statutory burdens of proof require an employee to prove that the alleged protected activity was a "contributing factor" to the alleged adverse action. If the employee proves that the alleged protected activity was a contributing factor to the adverse action, the employer, to escape liability, must prove by "clear and convincing evidence" that it would have taken the same action in the absence of the protected activity. A contributing factor is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)). In proving that protected activity was a contributing factor in the adverse action, "a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail," because a complainant alternatively can prevail by showing that the respondent's "'reason, while true, is only one of the reasons for its conduct,'" and that another reason was the complainant's protected activity. *See Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* No. 04–149, 2006 WL 3246904, *13 (ARB May 31, 2006) (discussing contributing factor test under the whistleblower provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 ("SOX"), 18 U.S.C. 1514A) (citing *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)).

CPSIA's burdens of proof do not address the evidentiary standard that applies to a complainant's proof that protected activity was a contributing factor in an adverse action. CPSIA simply provides that the Secretary may find a violation only "if the complainant demonstrates" that protected activity was a contributing factor in the alleged adverse action. *See* 15 U.S.C. 2087(b)(2)(B)(iii). It is the Secretary's position that the complainant must prove by a "preponderance of the evidence" that his or her protected activity contributed to the adverse action; otherwise the burden never shifts to the employer to establish its defense by "clear and convincing evidence." *See, e.g., Allen* v. *Admin. Review Bd.,* 514 F.3d 468, 475 n.1 (5th Cir. 2008) ("The term 'demonstrate' [under 42121(b)(2)(B)(iii)] means to prove by a preponderance of the evidence."). Once the complainant establishes that the protected activity was a contributing factor in the adverse action, the employer can escape liability only by proving by clear and convincing evidence that it would have reached the same decision even in the absence of the prohibited rationale. The "clear and convincing evidence" standard is a higher burden of proof than a "preponderance of the evidence" standard.

Section 1983.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, written findings regarding whether or not there is reasonable cause to believe that the complaint has merit. If the findings are that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate relief, including preliminary reinstatement. The findings and, where appropriate, preliminary order, advise the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing. The findings and, where appropriate, preliminary order, also advise the respondent of the right to request attorney's fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final decision and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he received prior to his termination, but not actually return to work. Such "economic reinstatement" frequently is employed in cases arising under Section 105(c) of the Federal Mine Safety and Health Act of 1977. *See, e.g., Secretary of Labor on behalf of York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (June 26, 2001). Congress intended that employees be preliminarily reinstated to their positions if OSHA finds reasonable cause that they were discharged in violation of CPSIA. When a violation is found, the norm is for OSHA to order immediate preliminary reinstatement. An employer does not have a statutory right to choose economic reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's satisfaction that reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the employee. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the employee continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating an employee should the employer ultimately prevail in the whistleblower adjudication.

Subpart B—Litigation

Section 1983.106 Objections to the Findings and the Preliminary Order and Request for a Hearing

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or e-mail communication is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections also is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record, as well as the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* No. 04–101, 2005 WL 2865915, *7 (ARB Oct. 31, 2005).

Section 1983.107 Hearings

This section adopts the rules of practice and evidence of the Office of Administrative Law Judges at 29 CFR part 18. The section specifically provides for consolidation of hearings if both the complainant and respondent object to the findings and/or order of the Assistant Secretary. Otherwise, this section does not address procedural issues, *e.g.,* place of hearing, right to counsel, procedures, evidence and record of hearing, oral arguments and briefs, and dismissal for cause, because the Office of Administrative Law Judges has adopted its own rules of practice that cover these matters.

Section 1983.108 Role of Federal Agencies

Under CPSIA it is not expected that the Secretary will ordinarily appear as a party in the proceeding. Nevertheless, the Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ; petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the ARB proceeding. Although we anticipate that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations that appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Consumer Product Safety Commission, at its own discretion, also may participate as amicus curiae at any time in the proceedings.

Section 1983.109 Decision and Orders of the Administrative Law Judge

This section sets forth the content of the decision and order of the ALJ, and includes the standard for finding a violation under CPSIA. The section further provides that the Assistant Secretary's determination to dismiss the complaint without an investigation or without a complete investigation pursuant to section 1983.104 is not subject to review. Thus, paragraph (c) of section 1983.109 clarifies that the Assistant Secretary's determinations on whether to proceed with an investigation under CPSIA and whether to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears cases *de novo* and, therefore, as a general matter, may not remand cases to the Assistant Secretary to conduct an investigation or make further factual findings. A full discussion of the burdens of proof used by the Department of Labor to resolve whistleblower cases under this part is set forth above in the discussion of section 1983.104.

Section 1983.110 Decision of the Administrative Review Board

Upon the issuance of the ALJ's decision, the parties have 10 business days within which to petition the ARB for review of that decision. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review. The date of the postmark, facsimile transmittal, or e-mail communication is considered the date of filing of the petition; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt.

The appeal provisions in this part provide that an appeal to the ARB is not a matter of right but is accepted at the discretion of the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If a timely petition for review is filed with the ARB, any relief ordered by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. When the ARB accepts a petition for review, the ALJ's factual determinations will be reviewed under the substantial evidence standard.

This section also provides that in the exceptional case, the ARB may grant a motion to stay an ALJ's preliminary order of reinstatement under CPSIA, which otherwise would be effective, while review is conducted by the ARB. The Secretary believes that a stay of an ALJ's preliminary order of reinstatement under CPSIA would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public favors a stay.

Subpart C—Miscellaneous Provisions

Section 1983.111 Withdrawal of Complaints, Objections, and Petitions for Review; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, and the withdrawal of objections to findings and/or orders. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Section 1983.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the ARB to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1983.113 Judicial Enforcement

This section describes the Secretary's power under CPSIA to obtain judicial enforcement of orders and the terms of a settlement agreement.

CPSIA expressly authorizes district courts to enforce orders, including preliminary orders of reinstatement, issued by the Secretary under 15 U.S.C. 2087(b)(6) ("Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order."). Specifically, reinstatement orders issued under 15 U.S.C. 2087(b)(2)(A) are immediately enforceable in district court under 15 U.S.C. 2087(b)(6) and (7). Subsection 2087(b)(3)(B)(ii) provides that the Secretary shall order the person who has committed a violation to reinstate the complainant to his or her former position. Subsection 2087(b)(2)(A) instructs the Secretary to accompany any reasonable cause finding that a violation occurred with a preliminary order containing the relief prescribed by subsection (b)(3)(B), which includes reinstatement. *See* 15 U.S.C. 2087(b)(3)(B)(ii). Subsection (b)(2)(A) also declares that the subsection (b)(3)(B)'s relief of reinstatement contained in a preliminary order is not stayed upon the filing of objections. 15 U.S.C. 2087(b)(2)(A) ("The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order."). Thus, under the statute, enforceable orders issued under subsection (b)(3) include preliminary

orders that contain the relief of reinstatement prescribed by subsection (b)(3)(B). This statutory interpretation is consistent with the Secretary's interpretation of similar language in AIR21 and SOX. *But see Bechtel* v. *Competitive Technologies, Inc.,* 448 F.3d 469 (2d Cir. 2006); *Welch* v. *Cardinal Bankshares Corp.,* 454 F. Supp. 2d 552 (W.D. Va. 2006) (decision vacated, appeal dismissed, No. 06–2995 (4th Cir. Feb. 20, 2008)). CPSIA also permits the person on whose behalf the order was issued under CPSIA to obtain judicial enforcement or orders and the terms of a settlement agreement.

Section 1983.114 District Court Jurisdiction of Retaliation Complaints

This section sets forth CPSIA's provisions allowing a complainant to bring an original *de novo* action in district court, alleging the same allegations contained in the complaint filed with OSHA, if there has been no final decision of the Secretary within 210 days of the filing of the complaint, or within 90 days after receiving a written determination. It also requires complainants to provide notice 15 days in advance of their intent to file a complaint in district court.

It is the Secretary's position that complainants may not initiate an action in federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the complaint. The purpose of the "kick-out" provisions is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals.

Section 1983.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and notice to the parties, waive any rule as justice or the administration of CPSIA requires.

IV. Paperwork Reduction Act

This rule does not contain a reporting provision that is subject to review by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

The notice and comment rulemaking procedures of Section 553 of the Administrative Procedure Act ("APA") do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). This is a rule of agency procedure and practice within the meaning of that section. Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments are not required for these regulations, which provide the procedures for the handling of retaliation complaints. Although this is a procedural rule not subject to the notice and comment procedures of the APA, we are providing persons interested in this interim final rule 60 days to submit comments. A final rule will be published after the agency receives and reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this interim final rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a "significant regulatory action" within the meaning of Section 3(f)(4) of Executive Order 12866 because the CPSIA whistleblower provisions are new. Executive Order 12866 requires a full economic impact analysis only for "economically significant" rules, which are defined in Section 3(f)(1) as rules that may "have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Because the rule is procedural in nature, it is not expected to have a significant economic impact, therefore, no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure and practice, it is not a "rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(3)(C)), and does not require Congressional review. Finally, this rule does not have "federalism implications." The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of CPSIA. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1983

Administrative practice and procedure, Employment, Consumer protection, Investigations, Reporting and recordkeeping requirements, Whistleblower.

Signed at Washington, DC, August 19, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble, 29 CFR part 1983 is added to read as follows:

PART 1983—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 219 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008.

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.

1983.100 Purpose and scope.
1983.101 Definitions.
1983.102 Obligations and prohibited acts.
1983.103 Filing of retaliation complaint.
1983.104 Investigation.
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Subpart B—Litigation

1983.106 Objections to the findings and the preliminary order and request for a hearing.
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1983.110 Decision and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

1983.111 Withdrawal of complaints, objections, and findings; settlement.
1983.112 Judicial review.
1983.113 Judicial enforcement.
1983.114 District court jurisdiction of retaliation complaints.
1983.115 Special circumstances; waiver of rules.

Authority: 15 U.S.C. 2087; Secretary of Labor's Order No. 5–2007, 72 FR 31160 (June 5, 2007); Secretary of Labor's Order No. 1–2010 (Jan. 15, 2010), 75 FR 3924–01 (Jan. 25, 2010).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1983.100 Purpose and scope.

(a) This part implements procedures of the employee protection provision of the Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. 2087. CPSIA provides for employee protection from retaliation because the employee has engaged in protected activity pertaining to consumer product safety.

(b) This part establishes procedures under the CPSIA for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf. These rules, together with those codified at 29 CFR part 18, set forth the procedures for submission of complaints under CPSIA, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1983.101 Definitions.

(a) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under CPSIA.

(b) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(c) *Commission* means the Consumer Product Safety Commission.

(d) *Complainant* means the employee who filed a CPSIA complaint or on whose behalf a complaint was filed.

(e) (1) *Consumer product* means any article, or component part thereof, produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise (the term "consumer product" includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site, but does not include such a device that is permanently fixed to a site).

(2) The term *consumer product* does not include:

(i) Any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer;

(ii) Tobacco and tobacco products;

(iii) Motor vehicles or motor vehicle equipment (as defined by 49 U.S.C. 30102(a)(6) and (7));

(iv) Pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*));

(v) Any article or any component of any such article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by 26 U.S.C. 4181;

(vi) Aircraft, aircraft engines, propellers, or appliances (as defined in 49 U.S.C. 40102(a));

(vii) Boats which could be subjected to safety regulation under 46 U.S.C. chapter 43; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in 46 U.S.C. 2101(1)) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this definitional section;

(viii) Drugs, devices, or cosmetics (as such terms are defined in 21 U.S.C. 321(g), (h), and (i)); or

(ix) Food (the term "food" means all "food," as defined in 21 U.S.C. 321(f), including poultry and poultry products (as defined in 21 U.S.C. 453(e) and (f)), meat, meat food products (as defined in 21 U.S.C. 601(j)), and eggs and egg products (as defined in 21 U.S.C. 1033)).

(f) *CPSIA* means Section 219 of the Consumer Product Safety Improvement Act of 2008, Public Law 110–314, August 14, 2008, codified at 15 U.S.C. 2087.

(g) *Distributor* means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(h) *Employee* means an individual presently or formerly working for, an individual applying to work for, or an individual whose employment could be affected by a manufacturer, private labeler, distributor, or retailer.

(i) *Manufacturer* means any person who manufactures or imports a consumer product. A product is manufactured if it is manufactured, produced, or assembled.

(j) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(k) *Private labeler* means an owner of a brand or trademark on the label of a consumer product which bears a private label. A consumer product bears a private label if:

(i) The product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product,

(ii) The person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and

(iii) The brand or trademark of a manufacturer of such product does not appear on such label.

(l) *Retailer* means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(m) *Respondent* means the employer named in the complaint who is alleged to have violated the Act.

(n) *Secretary* means the Secretary of Labor or person to whom authority under CPSIA has been delegated.

(o) Any future statutory amendments that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1983.102 Obligations and prohibited acts.

(a) No manufacturer, private labeler, distributor, or retailer may discharge or otherwise retaliate against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting or disciplining, any employee with respect to the employee's compensation, terms, conditions, or privileges of employment

because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee), engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.

(b) An employee is protected against retaliation (as described in paragraph (a) of this section) by a manufacturer, private labeler, distributor, or retailer because he or she:

(1) Provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government or the attorney general of a State, information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of the Consumer Product Safety Act, as amended by CPSIA, or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts;

(2) Testified, or is about to testify, in a proceeding concerning such violation;

(3) Assisted or participated, or is about to assist or participate, in such a proceeding; or

(4) Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of the Consumer Product Safety Act, as amended by CPSIA, or any other Act enforced by the Commission, or any order, rule, regulation, standard, or ban under any such Acts.

(c) This part shall have no application with respect to an employee of a manufacturer, private labeler, distributor, or retailer who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under the Consumer Product Safety Act, as amended by CPSIA, or any other law enforced by the Commission.

§ 1983.103 Filing of retaliation complaints.

(a) *Who may file.* An employee who believes that he or she has been retaliated against by a manufacturer, private labeler, distributor, or retailer in violation of CPSIA may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 180 days after an alleged violation of CPSIA occurs, any employee who believes that he or she has been retaliated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing.

§ 1983.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint by providing a copy of the complaint, redacted, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws, and will also notify the respondent of its rights under paragraphs (b) and (f) of this section. The Assistant Secretary will provide a copy of the unredacted complaint to the complainant (or complainant's legal counsel, if complainant is represented by counsel) and to the Consumer Product Safety Commission.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with the Assistant Secretary to present its position.

(c) Throughout the investigation, the agency will provide to the complainant (or the complainant's legal counsel if complainant is represented by counsel) a copy of all of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint. Before providing such materials to the complainant, the agency will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of title 29 of the Code of Federal Regulations.

(e)(1) A complaint of alleged violation will be dismissed unless the complainant has made a prima facie showing that protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse action took place shortly after the protected activity, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel, if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint will not be conducted or will be discontinued if the respondent, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the

same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in the prior paragraph, the Assistant Secretary will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1983.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated CPSIA and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the respondent (or the respondent's legal counsel, if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The respondent will be given the opportunity to submit a written response, to meet with the investigators, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon thereafter as the Assistant Secretary and the respondent can agree, if the interests of justice so require.

§ 1983.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of CPSIA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will include, where appropriate, a requirement that the respondent abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record (and the respondent's legal counsel if the respondent is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request attorney's fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the complaint was frivolous or brought in bad faith. The findings and, where appropriate, preliminary order, also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and the preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for hearing has been timely filed as provided at § 1983.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and the order.

Subpart B—Litigation

§ 1983.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees under CPSIA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1983.105(b). The objections, request for a hearing, and/or request for attorney's fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or e-mail communication is considered the date of filing; if the objection is filed in person, by hand delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which shall not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order shall become the final decision of the Secretary, not subject to judicial review.

§ 1983.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure and the rules of evidence for administrative hearings before the Office of Administrative Law Judges, codified at Part 18 of Title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo,* on the record.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be

consolidated and a single hearing will be conducted.

§ 1983.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Copies of documents in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, as well as other parties.

(b) The Consumer Product Safety Commission, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at the agency's discretion. At the request of the Commission, copies of all pleadings in a case must be sent to the Commission, whether or not it is participating in the proceeding.

§ 1983.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected behavior.

(c) Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1983.104(e) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the order will direct the respondent to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the ALJ shall assess against the respondent all costs and expenses (including attorney's and expert witness fees) reasonably incurred.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint was frivolous or was brought in bad faith, the judge may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the judge's order will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the ARB.

§ 1983.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board, U.S. Department of Labor, which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the ALJ will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the ARB and the ARB accepts the petition for review. The petition for review must specifically identify the legal conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. A petition must be filed within 10 business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 10 business days after the date of the decision of the ALJ unless a motion for reconsideration has been filed with the ALJ in the interim. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the final order will order the respondent to take appropriate affirmative action to abate the violation, including

reinstatement of the complainant to that person's former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of employment, and compensatory damages. At the request of the complainant, the ARB will assess against the respondent all costs and expenses (including attorney's and expert witness fees) reasonably incurred.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1983.111 Withdrawal of complaints, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary then will determine whether to approve the withdrawal. The Assistant Secretary will notify the respondent (or the respondent's legal counsel if respondent is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw his or her findings and/or preliminary order at any time before the expiration of the 30-day objection period described in § 1983.106, provided that no objection yet has been filed, and substitute new findings and/or a preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw its objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings or order, and there are no other pending objections, the Assistant Secretary's findings and order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition to review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant, and the respondent agree to a settlement. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates his or her consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced pursuant to § 1983.113.

§ 1983.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1983.109 and 1983.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order of the ARB is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB to the appropriate court pursuant to the Federal Rules of Appellate Procedure and local rules of the court.

§ 1983.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order, including one ordering reinstatement, or a final order, including one approving a settlement agreement, issued under the CPSIA, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. In such civil actions, the district court will have jurisdiction to grant all appropriate relief, including, but not limited to, injunctive relief and compensatory damages, including:

(a) Reinstatement with the same seniority status that the employee would have had, but for the discharge or retaliation;

(b) The amount of back pay, with interest; and

(c) Compensation for any special damages sustained as a result of the discharge or retaliation, including litigation costs, expert witness fees, and reasonable attorney's fees.

§ 1983.114 District court jurisdiction of retaliation complaints.

(a) If there has been no final decision of the Secretary within 210 days of the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

(b) Fifteen days in advance of filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending, a notice of his or her intention to file such a complaint. The notice must be served upon all parties to the proceeding. A copy of the notice must be served on the Regional Administrator, the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. The complainant shall file and serve a copy of the district court complaint on the above as soon as possible after the district court complaint has been filed with the court.

§ 1983.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these

rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders that justice or the administration of CPSIA requires.

[FR Doc. 2010–21122 Filed 8–30–10; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1978

[Docket Number OSHA–2008–0026]

RIN 1218–AC36

Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provision of the Surface Transportation Assistance Act of 1982

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending the regulations governing employee protection (or "whistleblower") claims under the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. 31105. The amendments clarify and improve procedures for handling STAA whistleblower complaints and implement statutory changes enacted into law on August 3, 2007, as part of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Act), Public Law 110–53, 121 Stat. 266. These changes to the STAA whistleblower regulations also make the procedures for handling retaliation complaints under STAA more consistent with OSHA's procedures for handling retaliation complaints under Section 211 of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5851 and other whistleblower provisions.

DATES: This interim final rule is effective on August 31, 2010. Comments on the interim final rule must be submitted (postmarked, sent or received) on or before November 1, 2010.

ADDRESSES: You may submit comments and additional materials by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0026, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2008–0026). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birth dates.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Nilgun Tolek, Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

Among other provisions of the 9/11 Commission Act, section 1536 reenacted the whistleblower provision in STAA, 49 U.S.C. 31105 (previously referred to as "Section 405"), with certain amendments. The regulatory revisions described herein reflect these statutory changes and also seek to clarify and improve OSHA's procedures for handling STAA whistleblower claims. To the extent possible within the bounds of applicable statutory language, these revised regulations are designed to be consistent with the procedures applied to claims under other whistleblower statutes administered by OSHA, including the ERA, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 49 U.S.C. 42121, and Title VIII of the Sarbanes-Oxley Act of 2002 (SOX), 18 U.S.C. 1514A. Responsibility for receiving and investigating complaints under 49 U.S.C. 31105 has been delegated to the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) (Secretary's Order 5–2007, 72 FR 31160, June 5, 2007). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges (ALJs) are decided by the Administrative Review Board (ARB) (Secretary's Order 1–2010 (Jan. 15, 2010), 75 FR 3924–01 (Jan. 25, 2010)).

II. Summary of Statutory Changes to STAA Whistleblower Provisions

The 9/11 Commission Act amended 49 U.S.C. 31105, and the related definitions provision at 49 U.S.C. 31101, by making the changes described below.

Expansion of Protected Activity

Before passage of the 9/11 Commission Act, STAA protected certain activities related to commercial motor vehicle *safety.* The 9/11 Commission Act expanded STAA's coverage to commercial motor vehicle *security.* In particular, 49 U.S.C. 31105(a)(1)(A) previously made it unlawful for a person to discharge, discipline, or discriminate against an employee regarding pay, terms, or privileges of employment because the employee, or another person at the employee's request, filed a complaint or began a proceeding related to a violation of a commercial motor vehicle safety regulation, standard or order, or testified or planned to testify in such a proceeding. The 9/11 Commission Act expanded this provision to include complaints and proceedings related to violations of commercial motor vehicle security regulations, standards, and orders.

Prior to the 2007 amendments, paragraph (a)(1)(B) of STAA's whistleblower provision prohibited a person from discharging, disciplining, or discriminating against an employee regarding pay, terms or privileges of employment for refusing to operate a

vehicle in violation of a regulation, standard, or order related to commercial motor vehicle safety or health. The statute also protected any employee who refused to operate a vehicle because he or she had a reasonable apprehension of serious injury to himself or herself or the public because of the vehicle's unsafe condition. The recent STAA amendments expanded these protections to cover: (1) Any employee who refuses to operate a vehicle in violation of regulations, standards, or orders related to commercial motor vehicle security; and (2) any employee who refuses to operate a vehicle because he or she has a reasonable apprehension of serious injury to himself or herself or the public due to the vehicle's hazardous security condition.

Before the statutory amendments, paragraph (a)(2) of STAA's whistleblower provision provided that an employee's apprehension of serious injury was reasonable only if a reasonable person in the circumstances then confronting the employee would have concluded that the "unsafe condition" of the vehicle established a real danger of accident, injury, or serious impairment to health. Moreover, to qualify for protection under this provision the employee had to have sought from the employer, and been unable to obtain, correction of the "unsafe condition." The August 2007 amendments replaced the term "unsafe conditions" with the phrase "hazardous safety or security conditions" throughout this paragraph.

The 9/11 Commission Act added a new paragraph to 49 U.S.C. 31105, (a)(1)(A)(ii), making it unlawful for a person to discharge, discipline or discriminate against an employee regarding pay, terms or privileges of employment because of a perception that the employee has filed or is about to file a complaint or has begun or is about to bring a proceeding concerning a violation of a commercial motor vehicle safety or security regulation, standard, or order. Paragraph (a)(1)(C) of 49 U.S.C. 31105 is also new and makes it unlawful to discharge, discipline, or discriminate against an employee regarding pay, terms, or privileges of employment because the employee accurately reports hours on duty pursuant to 49 U.S.C. chapter 315. The recent statutory amendments also added paragraph (a)(1)(D) to 49 U.S.C. 31105. This paragraph prohibits discharging, disciplining or discriminating against an employee regarding pay, terms or privileges of employment because the employee cooperates, or is perceived as being about to cooperate, with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board. Finally, the 9/11 Commission Act inserted paragraph (a)(1)(E) into 49 U.S.C. 31105. This provision prohibits a person from discharging, disciplining, or discriminating against an employee regarding pay, terms or privileges of employment because the employee furnishes, or is perceived as having furnished or being about to furnish, information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency about the facts concerning any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with commercial motor vehicle transportation.

Legal Burdens of Proof for STAA Complaints

Prior to the 9/11 Commission Act, the parties' burdens of proof in STAA actions were understood to be analogous to those developed for retaliation claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq. See, e.g., Clean Harbors Envtl. Servs., Inc.* v. *Herman,* 146 F.3d 12, 21–22 (1st Cir. 1998); *Yellow Freight Sys., Inc.* v. *Reich,* 27 F.3d 1133, 1138 (6th Cir. 1994). The plaintiff's prima facie case could be carried by a sufficient showing that (1) he or she engaged in protected activity; (2) he or she suffered an adverse action; and (3) a causal connection existed between the two events. *Id.* The ARB also required proof that the employer was aware that the employee had engaged in the protected activity. *See, e.g., Baughman* v. *J.P. Donmoyer, Inc.,* ARB No. 05–1505, ALJ No. 2005–STA–005, 2007 WL 3286335, at *3 (Admin. Review Bd. Oct. 31, 2007).

Once the complainant made this showing, an inference of retaliation arose and the burden shifted to the employer to produce evidence of a legitimate, non-retaliatory reason for the adverse action. *Clean Harbors,* 146 F.3d at 21; *Yellow Freight,* 27 F.3d at 1138. If the employer met this burden of production, the inference of retaliation was rebutted and the burden shifted back to the complainant to show by a preponderance of the evidence that the legitimate reason was a pretext for unlawful retaliation. *Id.* Where there was evidence that the employer acted out of mixed motives, *i.e.,* it acted for both permissible and impermissible reasons, the employer bore "the burden of establishing by a preponderance of the evidence that it would have taken the adverse employment action in the absence of the employee's protected activity." *Clean Harbors,* 146 F.3d at 21–22.

The 9/11 Commission Act amended paragraph (b)(1) of 49 U.S.C. 31105 to state that STAA whistleblower complaints will be governed by the legal burdens of proof set forth in AIR21, 49 U.S.C. 42121(b), which contains whistleblower protections for employees in the aviation industry. AIR21 provides that a complaint must be dismissed (and no investigation will be conducted) unless the complainant makes a prima facie showing that a protected activity was a contributing factor in the adverse action described in the complaint. Notwithstanding a finding that the complainant has made the required prima facie showing, AIR21 states that no investigation will be conducted if the employer demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the protected conduct. Under AIR21, a violation may be found only if the complainant demonstrates that protected activity was a contributing factor in the adverse action described in the complaint. And relief is unavailable if the employer demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the protected activity. *See Vieques Air Link, Inc.* v. *Dep't of Labor,* 437 F.3d 102, 108–09 (1st Cir. 2006) (per curiam) (burdens of proof under AIR21).

Written Notification of Complaints and Findings

Prior to the 9/11 Commission Act, STAA's whistleblower provision required the Secretary of Labor (Secretary) to notify persons when complaints were filed against them. The statute has now been amended at paragraph (b)(1) to clarify that this notice must be in writing. Similarly, the 9/11 Commission Act amended paragraph (b)(2)(A) of 49 U.S.C. 31105 to clarify that the Secretary's findings must be in writing.

Expansion of Remedies

Paragraph (b)(3)(A) of 49 U.S.C. 31105 previously compelled the Secretary, upon finding a violation of STAA's whistleblower provision, to order the employer to take affirmative abatement action, reinstate the complainant to his or her former position with the same pay and terms and privileges of employment, and pay compensatory damages, including backpay. The 9/11 Commission Act amended paragraph

(b)(3)(A)(iii) to reflect existing law on damages in STAA whistleblower cases and expressly provide for the award of interest on backpay as well as compensation for any special damages sustained as a result of the unlawful discrimination, including litigation costs, expert witness fees, and reasonable attorney fees. The 2007 amendments also added a new provision to 49 U.S.C. 31105, paragraph (b)(3)(C), authorizing punitive damage awards of up to $250,000.

De Novo Review

The August 2007 amendments added paragraph (c) to 49 U.S.C. 31105. That paragraph provides for *de novo* review of a STAA whistleblower claim by a United States district court in the event that the Secretary has not issued a final decision within 210 days after the filing of a complaint and the delay is not due to the complainant's bad faith. The provision provides that the court will have jurisdiction over the action without regard to the amount in controversy and that the case will be tried before a jury at the request of either party.

Preemption and Employee Rights

The 9/11 Commission Act added a new provision to 49 U.S.C. 31105 at paragraph (f) clarifying that nothing in the statute preempts or diminishes any other safeguards against discrimination provided by Federal or State law. The 2007 amendments to STAA also added a provision at paragraph (g) in 49 U.S.C. 31105 stating that nothing in STAA shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. New paragraph (g) further states that rights and remedies under 49 U.S.C. 31105 "may not be waived by any agreement, policy, form, or condition of employment."

Miscellaneous Provisions

The 9/11 Commission Act added a new provision to 49 U.S.C. 31105 at paragraph (h) regarding the circumstances in which the Secretary of Transportation and the Secretary of Homeland Security may disclose the names of employees who have provided information about certain alleged violations. In addition, the amendments added a new paragraph (i) to 49 U.S.C. 31105, which provides that the Secretary of Homeland Security will establish a process by which any person may report motor carrier vehicle security problems, deficiencies or vulnerabilities. Neither of these amendments significantly impacts OSHA's handling of whistleblower complaints under STAA.

Definition of "Employee"

Definitions applicable to STAA are found at 49 U.S.C 31101. That section defines "employee" as a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who (i) directly affects commercial motor vehicle safety in the course of employment by a commercial motor carrier; and (ii) is not an employee of the Federal, State or local government acting in the course of employment. The 9/11 Commission Act incorporated this definition into the whistleblower section of STAA, 49 U.S.C. 31105, at paragraph (j), and expanded it to include employees who directly affect commercial motor vehicle security in the course of employment by a commercial motor carrier.

III. Summary and Discussion of Regulatory Provisions

The regulatory provisions in this part are being revised to reflect the 9/11 Commission Act's amendments to STAA, to clarify and improve the procedures for handling STAA whistleblower cases, and, to the extent possible within the bounds of applicable statutory language, to be consistent with regulations implementing the whistleblower provisions of the following statutes, among others, that are also administered and enforced by OSHA: the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the ERA; and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610, all regulations for these statutory provisions jointly codified at 29 CFR part 24; AIR21, codified at 29 CFR part 1979; SOX, codified at 29 CFR part 1980; and the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129, codified at 29 CFR part 1981. The section numbers of these STAA regulations have been changed to correspond as closely as possible with the numbering in the regulations implementing other whistleblower statutes administered by OSHA.

These regulatory amendments incorporate two nonsubstantive changes in terminology. First, cases brought under the whistleblower provisions of STAA will now be referred to as actions alleging "retaliation" rather than "discrimination." This change in terminology, which has already been made in the regulations implementing the ERA and the other whistleblower statutes covered by 29 CFR part 24, is not intended to have substantive effect. It simply reflects the fact that claims brought under these whistleblower provisions are prototypical retaliation claims. A retaliation claim is a specific type of discrimination claim that focuses on actions taken as a result of an employee's protected activity rather than as a result of an employee's characteristics (*e.g.,* race, gender, or religion).

Second, these regulations previously referred to persons named in STAA whistleblower complaints as "named persons," but in the revised regulations they will be referred to as "respondents." Again, this change is not intended to have any substantive impact on the handling of STAA whistleblower cases. This revision simply reflects a preference for more conventional terminology.

Section 1978.100 Purpose and Scope

This section describes the purpose of the regulations implementing STAA's whistleblower provision and provides an overview of the procedures contained in the regulations. Paragraph (a) of this section is being revised to include an updated citation reference to the correct section of the United States Code where STAA's whistleblower provision is located and to reflect the recent statutory amendments extending coverage to activities pertaining to commercial motor vehicle security matters. Minor editorial edits are being made to paragraph (b) of this section.

Section 1978.101 Definitions

This section includes general definitions applicable to STAA's whistleblower provision. The definitions are being reorganized in alphabetical order and minor edits are being made to cleanup or clarify existing regulatory text.

A new definition of "business days" is being added at paragraph (c) to clarify that that term means days other than Saturdays, Sundays, and Federal holidays. This definition is consistent with 29 CFR 1903.22(c), an OSHA regulation interpreting the analogous term "working days" in section 10 of the Occupational Safety and Health Act (OSH Act), 29 U.S.C. 659, in the same way.

The regulations previously defined "commercial motor carrier" as a person who satisfied the definitions of "motor carrier" and "motor private carrier" in 49

U.S.C. 10102(13) and 10102(16). Those statutory references are out of date and are being replaced with: "Commercial motor carrier means any person engaged in a business affecting commerce between States or between a State and a place outside thereof who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate such a vehicle." The new definition of "commercial motor carrier" reflects the Secretary's longstanding practice of giving that phrase expansive meaning, *i.e.,* including within its reach all motor carriers in or affecting commerce. *See, e.g., Arnold* v. *Associated Sand and Gravel Co.,* Case No. 92–STA–19, 1992 WL 752791, at *3 (Office Admin. Appeals, Aug. 31, 1992) (appropriate to give the term "commercial" its legal meaning; "legislative history of the STAA * * * additionally militates in favor of construing the term expansively to describe motor carriers 'in' or 'affecting' commerce"). In addition, the revised definition of "commercial motor carrier" is more consistent with the statutory definition of "employer." *See* 49 U.S.C. 31101(3).

The statutory definition of "commercial motor vehicle" is being added to this section at paragraph (e), and the definition of "employee", now at paragraph (h), is being revised to reflect the statutory amendment expanding coverage to individuals whose work directly affects commercial motor vehicle security. In addition, the statutory definitions of "employer" and "State" are being added to this section at paragraphs (i) and (n) respectively, and a new paragraph is being added at the end of this section to clarify that any future statutory amendments will govern in lieu of the definitions contained in section 1978.101. A new definition of "complaint" is being added to this section at paragraph (g) to clarify the scope of activities protected by STAA's whistleblower provisions. *See* discussion of 1978.102 (Obligations and prohibited acts) below.

Section 1978.102 Obligations and Prohibited Acts

This new section describes the activities that are protected under STAA and the conduct that is prohibited in response to any protected activities. Insertion of this new section resulted in the renumbering of many subsequent sections.

Among other prohibited acts, it is unlawful under STAA for an employer to retaliate against an employee because the employee, or someone acting pursuant to the employee's request, has filed a complaint related to a violation of a commercial motor vehicle safety or security regulation, standard or order. 49 U.S.C. 31105(a)(1)(A)(i). STAA's whistleblower provision also protects employees who the employer perceives as having filed or being about to file such a complaint. 49 U.S.C. 31105(a)(1)(A)(ii). The Secretary has long taken the position that these provisions of STAA, as well as similarly worded provisions in other whistleblower statutes enforced by OSHA, cover both written and oral complaints to the employer or a government agency. *See, e.g., Harrison* v. *Roadway Express, Inc.,* No. 00–048, 2002 WL 31932546, at *4 (Admin. Review Bd. Dec. 31, 2002) ("[C]omplaints about violations of commercial motor vehicle regulations may be oral, informal or unofficial."), *aff'd on other grounds,* 390 F.3d 752 (2d Cir. 2004); *see also, e.g., Calhoun* v. *Dep't of Labor,* 576 F.3d 201, 212 (4th Cir. 2009) (citing *Yellow Freight Sys., Inc.* v. *Reich,* 8 F.3d 980, 986 (4th Cir. 1993) for the proposition that "written or oral" complaints can be protected under STAA); *Power City Elec., Inc.,* No. C–77–197, 1979 WL 23049, at *2 (E. D. Wash. Oct. 23, 1979) (noting that the term "filed", as used in Section 11(c) of the OSH Act, "is not limited to a written form of complaint."). It is particularly important for STAA to cover oral as well as written complaints because in many cases truck drivers are out on the road and the only way they can communicate immediate concerns about violations of safety and security regulations is via CB radio or phone. For these reasons, sections 1978.102(b)(1) and 1978.102(e)(1) are intended to cover the filing of written *and* oral complaints with employers or government agencies, and a definition of the term "complaint," reflecting this intent, has been added to section 1978.101.

Section 1978.103 Filing of Retaliation Complaints

This section (formerly section 1978.102) is being revised to make it more consistent with the regulatory procedures for other OSHA-administered whistleblower laws.

Complaints filed under STAA's whistleblower provision need not be in any particular form. Complainants have always been permitted to file STAA whistleblower complaints either orally or in writing. In light of this longstanding practice, OSHA will continue to accept STAA whistleblower complaints in either oral or written form. Allowing STAA whistleblower complaints to be filed orally is also consistent with OSHA's practice in whistleblower cases under Section 11(c) of the OSH Act, 29 U.S.C. 660(c); Section 211 of the Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. 2651; and Section 7 of the International Safe Container Act (ISCA), 46 U.S.C. 80507. And the final regulations implementing the ERA and the other whistleblower statutes covered by 29 CFR part 24 permit the filing of oral as well as written complaints. Language has been added to paragraph (b) to clarify that when a complaint is made orally, OSHA will reduce the complaint to writing. In addition, paragraph (b) is being updated to provide that if an employee is not able to file a complaint in English, OSHA will accept the complaint in any language.

Language has been added to paragraph (d) to clarify the date on which a complaint will be considered "filed," *i.e.,* the date of postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office.

Provisions in former paragraph (d) dealing with tolling of the 180-day period for the filing of STAA whistleblower complaints have been deleted for consistency with other OSHA whistleblower regulations, which do not contain this language. This revision is not intended to change the way OSHA handles untimely complaints under any whistleblower laws. A new sentence in the regulatory text clarifies that filing deadlines may still be tolled based on principles developed in applicable case law. *See, e.g., Donovan* v. *Hahner, Foreman & Harness, Inc.,* 736 F.2d 1421, 1423–29 (10th Cir. 1984).

Finally, paragraph (e), "Relationship to Section 11(c) complaints," has been revised to conform to similar provisions implementing other OSHA whistleblower programs and to more clearly describe the relationship between Section 11(c) complaints and STAA whistleblower complaints. Section 11(c) of the OSH Act generally prohibits employers from retaliating against employees for filing safety or health complaints or otherwise initiating or participating in proceedings under the OSH Act. In some circumstances an employee covered by STAA may engage in activities that are protected under both STAA and Section 11(c) of the OSH Act. For example, a freight handler loading cargo onto a commercial motor vehicle may complain about both the overloading of that vehicle (a safety complaint protected by STAA) and also about an unsafe forklift (a safety complaint

covered by the OSH Act). In practice, OSHA would investigate whether either or both of these protected activities caused the firing. Paragraph (e) now clarifies that STAA whistleblower complaints that also allege facts constituting an 11(c) violation will be deemed to have been filed under both statutes. Similarly, Section 11(c) complaints that allege facts constituting a violation of STAA's whistleblower provision will also be deemed to have been filed under both laws. In these cases, normal procedures and timeliness requirements under the respective statutes and regulations will be followed.

Section 1978.104 Investigation

This section (formerly section 1978.103) has been revised to more closely conform to the regulations implementing other whistleblower provisions administered by OSHA. Former paragraph (f) in section 1978.102, which deals with the notice sent to employers when complaints are filed against them, is being moved to paragraph (a) in section 1978.104, where it more appropriately appears under the "Investigation" heading. In addition, minor revisions are being made to that paragraph to be more consistent with similar provisions in other OSHA whistleblower regulations. Of particular note, new language is being added requiring OSHA to send the Federal Motor Carrier Safety Administration (FMCSA) a copy of the notice that goes to the employer. This has been standard practice in any event.

Former section 1978.103(a), which simply stated that OSHA would investigate and gather data as it deemed appropriate, is being deleted as unnecessary. Paragraph (b) is being revised to conform to other OSHA whistleblower regulations. Language describing the persons who can be present and the issues that can be addressed at OSHA's meetings with respondents is being deleted, but this is not intended to change the manner in which OSHA conducts these meetings.

A new paragraph (c) specifies that throughout the investigation the agency will provide to the complainant (or the complainant's legal counsel if the complainant is represented by counsel) a copy of all of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint. Before providing such materials to the complainant, the agency will redact them in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws. The agency expects that sharing information with complainants in accordance with this new provision will enhance OSHA's ability to conduct full and fair investigations and permit the Assistant Secretary to more thoroughly assess defenses raised by respondents.

A new paragraph (d) addresses confidentiality in investigations. In addition, a new paragraph is being added to this section at paragraph (e), which incorporates the AIR21 burdens of proof that were carried over to STAA's whistleblower provision by the 9/11 Commission Act. This paragraph generally conforms to similar provisions in the regulations implementing the AIR21 and ERA whistleblower laws. All of these statutes now require that a complainant make an initial prima facie showing that protected activity was "a contributing factor" in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing. Complainant's burden may be satisfied, for example, if he or she shows that the adverse action took place shortly after protected activity, giving rise to the inference that it was a contributing factor in the adverse action. Language from some of OSHA's other whistleblower regulations, including those implementing AIR21 and ERA, setting forth specific elements of the complainant's prima facie case has been carried over into these regulations, although it has been modified slightly to reflect the new provisions in STAA specifically protecting employees who are "perceived" as having engaged in certain conduct. *See Reich* v. *Hoy Shoe Co.,* 32 F.3d 361, 368 (8th Cir. 1994) ("Construing § 11(c), the OSH Act's anti-retaliation provision, to protect employees from adverse employment actions because they are suspected of having engaged in protected activity is consistent with * * * the specific purposes of the anti-retaliation provisions.").

If the complainant does not make the required prima facie showing, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the ERA, which is the same framework now found in the AIR21 law and STAA, served a "gatekeeping function" that "stemm[ed] frivolous complaints"). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer demonstrates, by clear and convincing evidence, that it would have taken the same adverse action in the absence of the protected activity. Thus, OSHA must dismiss a complaint under STAA and not investigate (or cease investigating) if either: (1) The complainant fails to meet the prima facie showing that protected activity or, where covered by STAA, the perception of protected activity, was a contributing factor in the adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity or the perception thereof.

Former section 1978.103(c) is being moved to paragraph (f) of this section. Minor revisions are being made to this paragraph to conform to similar paragraphs in the regulations implementing the AIR21 and SOX whistleblower provisions. This includes allowing ten business days (rather than five days) for the respondent to present evidence in support of its position against an order of preliminary reinstatement.

Section 1978.105 Issuance of Findings and Preliminary Orders

Former paragraph (a) in section 1978.104, now at paragraph (a) in this section, is being updated to reflect the recent amendments to STAA expanding available remedies. If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she will order appropriate relief, including preliminary reinstatement. In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he or she received prior to his or her termination, but not actually return to work. Such "economic reinstatement" is employed in cases arising under Section 105(c) of the Federal Mine Safety and Health Act of 1977. *See, e.g., Secretary of Labor on behalf of York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (June 26, 2001). Congress intended that complainants be preliminarily reinstated to their positions if OSHA finds reasonable cause that they were discharged in violation of STAA's whistleblower provision. When a violation is found, the norm is for OSHA to order immediate, preliminary reinstatement. An employer does not have a statutory right to choose

economic reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's satisfaction that reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the complainant. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the complainant continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating a complainant should the employer ultimately prevail in the whistleblower litigation.

A new provision is being added at paragraph (a)(2) of this section requiring the Assistant Secretary to notify the parties if it finds that a violation has not occurred. Former section 1978.104(c), which provided for the suspension of 11(c) complaints pending the outcome of STAA proceedings, is being deleted. As described above, section 1978.103(e) now adequately describes the relationship between STAA and 11(c) complaints.

Paragraph (b) is being revised to clarify that OSHA need not send the original complaint to the Chief Administrative Law Judge when it issues its findings and preliminary order; a copy of the complaint will suffice. Former section 1978.105(b)(1) is being moved to section 1978.105(c). This paragraph states that the Assistant Secretary's preliminary order will be effective 30 days after receipt, or on the compliance date set forth in the preliminary order, whichever is later, unless an objection is filed. It also clarifies that any preliminary order requiring reinstatement will be effective immediately. This paragraph mirrors existing provisions in other OSHA whistleblower regulations.

Subpart B—Litigation

Section 1978.106 Objections to the Findings and the Preliminary Order and Request for a Hearing

Minor revisions are being made to paragraph (a), formerly section 1978.105(a), to conform to other OSHA whistleblower regulations. The new paragraph now clarifies that with respect to objections to the findings and preliminary order, the date of the postmark, fax, or e-mail communication is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections is also considered a request for a hearing before an ALJ. The amended language also clarifies that in addition to filing objections with the Chief Administrative Law Judge, the parties must serve a copy of their objections on the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor for Occupational Safety and Health. A failure to serve copies of the objections on the appropriate parties does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* ARB No. 04–101, ALJ No. 2004–ERA–9, 2005 WL 2865915, at *7 (Admin. Review Bd. Oct. 31, 2005).

The title to former section 1978.105(b) is being deleted because it is unnecessary. In addition, as previously mentioned, former paragraph (b)(1) in section 1978.105 is being moved to new paragraph (c) in section 1978.105. Finally, some minor, nonsubstantive revisions are being made to former 1978.105(b)(2), now at 1978.106(b), and additional language is being added to that paragraph to clarify that all provisions of the ALJ's order, with the exception of any order for preliminary reinstatement, will be stayed upon the filing of a timely objection. The respondent may file a motion for a stay of a preliminary reinstatement order.

Section 1978.107 Hearings

Former section 1978.106, which has become section 1978.107, was titled "Scope of rules; applicability of other rules; notice of hearing." The title is being changed to "Hearings," the title assigned to similar sections in other OSHA whistleblower regulations.

Minor revisions are being made to paragraph (a), which adopts the rules of practice and procedure and the rules of evidence for administrative hearings before the Office of Administrative Law Judges, codified at 29 CFR part 18. Changes are also being made to paragraph (b) to conform to other OSHA whistleblower regulations. The requirements for the ALJ to set a hearing date within seven days, and to commence a hearing within 30 days, have been deleted, and new language is being added to clarify that hearings will commence expeditiously and be conducted *de novo* and on the record. The new language is not intended to change current case-handling practices.

Paragraph (c), which deals with situations in which both the complainant and the respondent object to the findings and/or preliminary order, is being revised, consistent with the changes made to paragraph (b), to remove language stating that hearings shall commence within 30 days of the last objection received.

Former paragraph (d), dealing with the ALJ's discretion to order the filing of prehearing statements, is being deleted as unnecessary.

Section 1978.108 Role of Federal Agencies

Former section 1978.107, titled "Parties," is now at section 1978.108 with the new title "Role of Federal agencies." This conforms to the terminology used in OSHA's other whistleblower regulations.

Former paragraphs (a), (b), and (c) in section 1978.107 are now combined in section 1978.108(a)(1). The changes made to these paragraphs are not intended to be substantive, *i.e.,* there is no intent to change the rights to party status currently afforded the Assistant Secretary, complainants, or respondents. The Assistant Secretary, represented by an attorney from the appropriate Regional Solicitor's Office, will still generally assume the role of prosecuting party in STAA whistleblower cases in which the respondent objects to the findings or preliminary order. This continues longstanding practice in STAA cases and the Secretary believes that the public interest generally requires the Assistant Secretary's continued participation in such matters. It has been the Secretary's experience that relatively few private attorneys have developed adequate expertise in representing STAA whistleblower complainants and that complainants in the motor carrier industry have been more likely to proceed *pro se* than employees covered by OSHA's other whistleblower programs. Where the complainant, but not the respondent, objects to the findings or order, the regulations retain the Assistant Secretary's discretion to participate as a party or amicus curiae at any stage of the proceedings, including the right to petition for review of an ALJ decision.

A new paragraph (a)(2) clarifies that if the Assistant Secretary assumes the role of prosecuting party in accordance with paragraph (a)(1), he or she may, upon written notice to the other parties, withdraw as the prosecuting party in the exercise of prosecutorial discretion. If the Assistant Secretary withdraws, the complainant will become the prosecuting party and the ALJ will issue appropriate orders to regulate the course of future proceedings. Section 1978.111(d)(3) (discussed below) retains language clarifying that the Assistant Secretary may decline the role of

prosecuting party if the complainant rejects a reasonable settlement offer.

New paragraphs (a)(3) and (b) are being added to this section. Paragraph (a)(3) simply provides that in all cases in which the Assistant Secretary is participating in the proceeding, copies of documents must be sent to the Assistant Secretary and the Associate Solicitor for Occupational Safety and Health, as well as to all other parties. In cases in which the Assistant Secretary is not a party, copies of documents must be sent to the Assistant Secretary and all parties, but not to the Associate Solicitor.

Paragraph (b) states that the FMCSA may participate in the proceedings as amicus curiae at its own discretion. This paragraph also permits the FMCSA to request copies of all documents, regardless of whether it is participating in the case. This provision mirrors similar language in the regulations implementing other OSHA-administered whistleblower laws.

The provisions formerly at section 1978.108, which described the manner in which STAA whistleblower cases would be captioned or titled, are being deleted. It is unnecessary to continue to include that material in these regulations.

Section 1978.109 Decision and Orders of the Administrative Law Judge

This section sets forth the content of the decision and order of the ALJ, and includes the standards for finding a violation under STAA's whistleblower provision. The title of this section is being revised to conform to the title assigned to similar provisions in other OSHA whistleblower regulations. Previously, section 1978.109 addressed decisions of both the ALJs and the ARB. In conformance with other OSHA whistleblower regulations, these two topics are now being separated into individual sections. Section 1978.109 now covers only ALJ decisions and section 1978.110 addresses ARB decisions.

Former paragraph (a) is being divided among multiple paragraphs in this section and otherwise revised to reflect the parties' new burdens of proof and to conform more closely to the regulations implementing other OSHA-administered whistleblower laws. In litigation, the statutory burdens of proof require a complainant to prove that the alleged protected activity or, when covered by STAA, the perception of protected activity, was a "contributing factor" in the alleged adverse action. If the complainant satisfies his or her burden, the employer, to escape liability, must prove by "clear and convincing evidence" that it would have taken the same action in the absence of the protected activity or the perception thereof.

A contributing factor is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision." *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)). In proving that protected activity was a contributing factor in the adverse action, "a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail," because a complainant alternatively can prevail by showing that the respondent's "reason, while true, is only one of the reasons for its conduct," and that another reason was a prohibited one. *See Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* ARB No. 04–149, ALJ No. 04–SOX–11, 2006 WL 3246904, at *13 (Admin. Review Bd. May 31, 2006) (discussing contributing factor test under SOX) (citing *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)).

The AIR21 burdens of proof, now incorporated in STAA, do not address the evidentiary standard that applies to a complainant's proof that protected activity was a contributing factor in an adverse action. AIR 21 simply provides that the Secretary may find a violation only "if the complainant demonstrates" that protected activity was a contributing factor in the alleged adverse action. 49 U.S.C. 42121(b)(2)(B)(iii). It is the Secretary's position that the complainant must prove by a "preponderance of the evidence" that his or her protected activity or, when covered by STAA, the perception of protected activity, contributed to the adverse action at issue; otherwise, the burden never shifts to the employer to establish its defense by clear and convincing evidence. *See, e.g., Allen* v. *Admin. Review Bd.,* 514 F.3d 468, 475 n.1 (5th Cir. 2008) ("The term 'demonstrates' means to prove by a preponderance of the evidence."). Once the complainant establishes that protected activity was a contributing factor in an adverse action, the employer can escape liability only by proving by clear and convincing evidence that it would have reached the same decision even in the absence of the protected activity. The clear and convincing evidence standard is a higher burden of proof than a preponderance of the evidence standard.

The requirement that the ALJ issue a decision within 30 days after the close of the record, and the related provision requiring the ALJ to close the record within 30 days after the filing of the objection, have been eliminated because procedures for issuing decisions, including their timeliness, are addressed by the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges at 29 CFR 18.57.

New section 1978.109(c), which is similar to provisions in other OSHA whistleblower regulations, provides that the Assistant Secretary's determinations about when to proceed with an investigation and when to dismiss a complaint without completing an investigation are discretionary decisions not subject to review by the ALJ. The ALJ hears cases *de novo* and, therefore, as a general matter, may not remand cases to the Assistant Secretary to conduct an investigation or make further factual findings. If there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if warranted by the facts and circumstances.

1978.109(d)(1) now describes the relief the ALJ can award upon finding a violation and reflects the recent statutory amendments. (See earlier discussion of section 1978.105(a).) In addition, new paragraph (d)(2) in this section requires the ALJ to issue an order denying the complaint if he or she determines that the respondent has not violated STAA.

Previously under these regulations, ALJs' decisions and orders were subject to automatic review by the ARB. These procedures were unique to STAA whistleblower cases and resulted in a heavy STAA caseload for the ARB. This has made it more difficult for the ARB to promptly resolve the cases on its docket and has delayed the resolution of STAA cases in which the parties are mutually satisfied with the ALJ's decision and order. Overall, requiring mandatory ARB review of every STAA whistleblower case is an inefficient use of limited resources. In conformance with the procedures used under the other whistleblower provisions administered by OSHA and adjudicated by ALJs, these regulations are being revised to provide for ARB review of an ALJ's decision only if one or more of the parties to the case files a petition requesting such review. These new procedures for review of ALJ decisions will apply to all ALJ decisions issued on or after the effective date of these regulations.

Former section 1978.109(b) is being deleted, although much of its content is being moved to paragraph (e). New section 1978.109(e), which borrows

language from similar provisions in other OSHA whistleblower regulations, gives parties ten business days after the date of the ALJ's decision to file a petition for review with the ARB. If no petition for review is filed within that timeframe, the ALJ's decision is final and all portions of the order become effective. New paragraph (e), in addition to giving parties ten business days to seek review before the ARB, clarifies that any orders relating to reinstatement will be effective immediately upon receipt of the decision by the respondent.

All of the provisions in former section 1978.109, which codified the automatic review process, primarily former paragraphs (c)(1) and (c)(2), are being deleted. The content of former paragraph (c)(3), regarding the standard for ARB review of ALJ decisions, is being moved to new section 1978.110(b). The content of former paragraph (c)(4), which required the ARB to issue an order denying the complaint if it determined that the respondent had not violated the law, is now at section 1978.110(e). Former paragraph (c)(5), which required service of the ARB decision on all parties, has become a part of new section 1978.110(c).

Section 1978.110 Decision and Orders of the Administrative Review Board

This is a new section, borrowed largely from existing regulations implementing other OSHA whistleblower laws. In accordance with the decision to discontinue automatic ARB review of ALJ decisions, paragraph (a) of this section gives the parties ten business days from the date of the ALJ's decision to file a petition for review with the ARB. The decision of the ALJ becomes the final decision of the Secretary, and is not subject to judicial review, if no timely petition for review is filed. Paragraph (a) also clarifies that the date of the postmark, fax, e-mail communication, or hand-delivery will be deemed the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

Consistent with the procedures for ARB appeals under other OSHA-administered whistleblower laws, paragraph (b) provides that the ARB has discretion to accept or reject review in STAA whistleblower cases. Congress intended these whistleblower actions to be expedited, as reflected by the recent amendment to STAA providing for a hearing *de novo* in district court if the Secretary has not issued a final decision within 210 days of the filing of the complaint. Making review of STAA whistleblower cases discretionary may assist in furthering that goal. The parties should identify in their petitions for review the conclusions and orders to which they object, or the objections will ordinarily be deemed waived. The ARB has 30 days to decide whether to grant a petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. This section further provides that when the ARB accepts a petition for review, it will review the ALJ's factual determinations under the substantial evidence standard, a standard previously set forth in section 1978.109(c)(3). If a timely petition for review is filed with the ARB, relief ordered by the ALJ is inoperative while the matter is pending before the ARB, except that orders of reinstatement will be effective pending review. Paragraph (b) does provide that in exceptional circumstances the ARB may grant a motion to stay an ALJ's order of reinstatement. The Secretary believes that a stay of a reinstatement order is only appropriate when the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public favoring a stay.

Paragraph (c) of section 1978.110 incorporates the statutory requirement that the Secretary's final decision be issued within 120 days of the conclusion of the hearing. The hearing is deemed concluded ten business days after the date of the ALJ's decision unless a motion for reconsideration has been filed with the ALJ, in which case the hearing is concluded on the date the motion for reconsideration is denied or ten business days after a new ALJ decision is issued. (Previously, section 1978.109(a) provided that the issuance of the ALJ's decision would be deemed the conclusion of the hearing. The new provision is more consistent with procedures used under other OSHA-administered whistleblower provisions and the new procedures for seeking ARB review of ALJ decisions in STAA whistleblower cases.) This paragraph further provides for the ARB's decision in all cases to be served on all parties, the Chief Administrative Law Judge, the Assistant Secretary, and the Associate Solicitor for Occupational Safety and Health.

Paragraph (d) describes the remedies the ARB can award if it concludes that the respondent has violated STAA's whistleblower provision. In addition, under paragraph (e), if the ARB determines that the respondent has not violated STAA, it will issue an order denying the complaint. Paragraph (f) clarifies that the new procedures for seeking review before the ARB apply to all cases in which ALJ decisions are issued on or after the effective date of these regulations.

Subpart C—Miscellaneous Provisions

Section 1978.111 Withdrawal of STAA Complaints, Objections, and Petitions for Review; Settlement

This section provides procedures and time periods for the withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, the withdrawal of objections to findings and/or preliminary orders, and the withdrawal of petitions for review of ALJ decisions. It also provides for the approval of settlements at the investigative and adjudicative stages of the case.

A new sentence is being added to paragraph (a) to clarify that complaints that are withdrawn pursuant to settlement agreements prior to the filing of objections must be approved in accordance with the settlement approval procedures in paragraph (d). In addition, paragraph (a) now clarifies that the complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order. Significant revisions are being made to paragraph (c), which addresses situations in which parties seek to withdraw either objections to the Assistant Secretary's findings and/or preliminary order or petitions for review of ALJ decisions. Paragraph (c) provides that a party may withdraw its objections to the Assistant Secretary's findings and/or preliminary order at any time before the findings and preliminary order become final by filing a written withdrawal with the ALJ. Similarly, if a case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, depending on where the case is pending, will determine whether to approve the withdrawal of the objections or the petition for review. Paragraph (c) clarifies that if the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or preliminary order, and there are no other pending objections, the Assistant Secretary's findings and preliminary order will become the final order of the Secretary. Likewise, if the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's

decision will become the final order of the Secretary. Finally, paragraph (c) provides that if objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d).

Paragraph (d)(1) states that a case may be settled at the investigative stage if the Assistant Secretary, the complainant, and the respondent agree. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates his or her consent and achieves the consent of all three parties. Minor, nonsubstantive changes are being made to paragraphs (d)(2) and (d)(3). Paragraph (d)(3), which addresses the Assistant Secretary's authority to withdraw as the prosecuting party if the complainant refuses to accept a fair and equitable settlement, is being retained in these revised regulations. *See supra* (discussion of section 1978.108).

A new paragraph (e) is being added to this section. Borrowing language from similar provisions in other OSHA whistleblower regulations, this paragraph simply clarifies that settlements approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced pursuant to 49 U.S.C. 31105(e) and section 1978.113 (judicial enforcement).

Section 1978.112 Judicial Review

This section, formerly section 1978.110, describes the statutory provisions for judicial review of decisions of the Secretary and, in cases where judicial review is sought, requires the ARB to submit the record of proceedings to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court. Nonsubstantive revisions are being made to paragraphs (a), (b), and (c).

Former section 1978.112, which addressed deference to other forums, including grievance arbitration proceedings under collective bargaining agreements, has been deleted to conform to other OSHA whistleblower regulations, which do not contain similar provisions.

Section 1978.113 Judicial Enforcement

Nonsubstantive revisions are being made to this section, which describes the Secretary's power under STAA's whistleblower provision to obtain judicial enforcement of orders, including orders approving settlement agreements.

Section 1978.114 District Court Jurisdiction of Retaliation Complaints Under STAA

This new section incorporates into the regulations the recent amendment to STAA allowing a complainant in a whistleblower case to bring an action in district court for *de novo* review if there has been no final decision of the Secretary within 210 days of the filing of the complaint and the delay was not due to the complainant's bad faith. Section 1978.114 has been drafted to reflect the Secretary's position that it would not be reasonable to construe the statute to permit a complainant to initiate an action in Federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the administrative complaint. In the Secretary's view, the purpose of the "kick out" provision is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals. The regulations have been drafted in accordance with this position.

Paragraph (b) provides that complainants must give notice fifteen days in advance of their intent to file a complaint in district court. This is borrowed from some of OSHA's other regulations implementing similar "kick out" provisions. In addition, under paragraph (b), the complainant must file and serve the district court complaint on all parties to the proceeding as well as OSHA's Regional Administrator, the Assistant Secretary, and the Associate Solicitor for Occupational Safety and Health.

Section 1978.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and three days notice to the parties, waive any rule or issue such orders as justice or the administration of STAA's whistleblower provision requires.

OSHA has deleted former section 1978.114, which provided that the time requirements imposed on the Secretary by these regulations are directory in nature and that a failure to meet those requirements did not invalidate any action by the Assistant Secretary or Secretary under STAA. These principles are well-established in the case law, *see, e.g., Roadway Express* v. *Dole,* 929 F.2d 1060, 1066 (5th Cir. 1991), and this provision, which was unique to OSHA's STAA regulations, is unnecessary. The Secretary views the deletion of this provision as a nonsubstantive amendment. No significant change in STAA practices or procedures is intended.

IV. Paperwork Reduction Act

This rule does not contain a reporting provision that is subject to review by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

The notice and comment rulemaking procedures of Section 553 of the Administrative Procedure Act (APA) do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). This is a rule of agency procedure and practice within the meaning of that section. Therefore publication in the **Federal Register** of a notice of proposed rulemaking and request for comments is not required. Although this is a procedural rule not subject to the notice and comment procedures of the APA, we are providing persons interested in this interim final rule 60 days to submit comments. A final rule will be published after the agency receives and carefully reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. In addition to this authority, the Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The agency has concluded that this rule is not a "significant regulatory action" within the meaning of Executive Order 12866 because it is not likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of

the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Because this rulemaking is procedural in nature it is not expected to have a significant economic impact; therefore no statement is required under Section 202 of the Unfunded Mandates Reform Act of 1995. Furthermore, because this is a rule of agency procedure or practice, it is not a "rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(3)(C)) and does not require congressional review. Finally, this rule does not have "federalism implications." The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The agency has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation primarily implements procedures necessitated by statutory amendments enacted by Congress. Additionally, the regulatory revisions are necessary for the sake of consistency with the regulatory provisions governing procedures under other whistleblower statutes administered by OSHA. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1978

Administrative practice and procedure, Employment, Highway safety, Investigations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety, Transportation, Whistleblowing.

Signed in Washington, DC August 19, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble part 1978 of title 29 of the Code of Federal Regulations is revised to read as follows:

PART 1978—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

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1978.114 District court jurisdiction of retaliation complaints under STAA.
1978.115 Special circumstances; waiver of rules.

Authority: 49 U.S.C. 31101 and 31105; Secretary of Labor's Order No. 5–2007, 72 FR 31160 (June 5, 2007); Secretary of Labor's Order 1–2010 (Jan. 15, 2010), 75 FR 3924–01 (Jan. 25, 2010).

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

§ 1978.100 Purpose and scope.

(a) This part implements the procedures of the employee protection (whistleblower) provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. 31105, as amended, which protects employees from retaliation because the employee has engaged in, or, in some circumstances is perceived to have engaged in, protected activity pertaining to commercial motor vehicle safety, health, or security matters.

(b) This part establishes procedures pursuant to the statutory provision set forth above for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings, litigation before administrative law judges (ALJs), post-hearing administrative review, withdrawals and settlements, and judicial review and enforcement.

§ 1978.101 Definitions.

(a) *Act* means the Surface Transportation Assistance Act of 1982 (STAA), as amended.

(b) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

(c) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(d) *Commercial motor carrier* means any person engaged in a business affecting commerce between States or between a State and a place outside thereof who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate such a vehicle.

(e) *Commercial motor vehicle* means a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle:

(1) Has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(2) Is designed to transport more than ten passengers including the driver; or

(3) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed under 49 U.S.C. 5103.

(f) *Complainant* means the employee who filed a STAA whistleblower complaint or on whose behalf a complaint was filed.

(g) *Complaint,* for purposes of § 1978.102(b)(1) and § 1978.102(e)(1), includes both written and oral complaints to employers and/or government agencies.

(h) *Employee* means a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight

handler, or an individual not an employer, who:

(1) Directly affects commercial motor vehicle safety or security in the course of employment by a commercial motor carrier; and

(2) Is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.

(i) *Employer* means a person engaged in a business affecting commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate the vehicle in commerce, but does not include the Government, a State, or a political subdivision of a State.

(j) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(k) *Person* means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any other group of individuals.

(l) *Respondent* means the person alleged to have violated 49 U.S.C. 31105.

(m) *Secretary* means the Secretary of Labor or persons to whom authority under the Act has been delegated.

(n) *State* means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(o) Any future statutory amendments that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1978.102 Obligations and prohibited acts.

(a) No person may discharge or otherwise retaliate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee engaged in any of the activities specified in paragraphs (b) or (c) of this section. In addition, no person may discharge or otherwise retaliate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because a person acting pursuant to the employee's request engaged in any of the activities specified in paragraph (b) of this section.

(b) It is a violation for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge, discipline, or in any other manner retaliate against any employee because the employee or a person acting pursuant to the employee's request has:

(1) Filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order; or

(2) Testified or will testify at any proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order.

(c) It is a violation for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge, discipline, or in any other manner retaliate against any employee because the employee:

(1) Refuses to operate a vehicle because:

(i) The operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security; or

(ii) He or she has a reasonable apprehension of serious injury to himself or herself or the public because of the vehicle's hazardous safety or security condition;

(2) Accurately reports hours on duty pursuant to Chapter 315 of Title 49 of the United States Code; or

(3) Cooperates with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(4) Furnishes information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with commercial motor vehicle transportation.

(d) No person may discharge or otherwise retaliate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the person perceives that the employee has engaged in any of the activities specified in paragraph (e) of this section.

(e) It is a violation for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge, discipline, or in any other manner retaliate against any employee because the employer perceives that:

(1) The employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard or order;

(2) The employee is about to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(3) The employee has furnished or is about to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with commercial motor vehicle transportation.

(f) For purposes of this section, an employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the hazardous safety or security condition establishes a real danger of accident, injury or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security conditions.

§ 1978.103 Filing of retaliation complaints.

(a) *Who may file.* An employee who believes that he or she has been retaliated against by an employer in violation of STAA may file, or have filed by any person on the employee's behalf, a complaint alleging such retaliation.

(b) *Nature of Filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If an employee is unable to file a complaint in English, OSHA will accept the complaint in any language.

(c) *Place of Filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for Filing.* Within 180 days after an alleged violation occurs, an employee who believes that he or she has been retaliated against in violation of STAA may file, or have filed by any person on his or her behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law.

(e) *Relationship to Section 11(c) complaints.* A complaint filed under STAA alleging facts that would also constitute a violation of Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be a complaint under both STAA and Section 11(c). Similarly, a complaint filed under Section 11(c) that alleges facts that would also constitute a violation of STAA will be deemed to be a complaint filed under both STAA and Section 11(c). Normal procedures and timeliness requirements under the respective statutes and regulations will be followed.

§ 1978.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the respondent of the filing of the complaint by providing the respondent (or the respondent's legal counsel if respondent is represented by counsel) with a copy of the complaint, redacted in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws. The Assistant Secretary will also notify the respondent (or the respondent's legal counsel if respondent is represented by counsel) of the respondent's rights under paragraphs (b) and (f) of this section. The Assistant Secretary will provide a copy of the unredacted complaint to the complainant (or complainant's legal counsel, if complainant is represented by counsel) and to the Federal Motor Carrier Safety Administration.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with the Assistant Secretary to present its position.

(c) Throughout the investigation, the agency will provide to the complainant (or the complainant's legal counsel if complainant is represented by counsel) a copy of all of respondent's submissions to the agency that are responsive to the complainant's whistleblower complaint. Before providing such materials to the complainant, the agency will redact them in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, *et seq.,* and other applicable confidentiality laws.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of title 29 of the Code of Federal Regulations.

(e)(1) A complaint of alleged violation will be dismissed unless the complainant has made a prima facie showing that protected activity or, in circumstances covered by the Act, a perception of protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity or, in circumstances covered by the Act, was perceived to have engaged in a protected activity;

(ii) The respondent knew or suspected, actually or constructively, that the employee engaged in the protected activity, or, in circumstances covered by the Act, perceived the employee to have engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity or, in circumstances covered by the Act, the perception of protected activity, was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity (or, in circumstances covered by the Act, perceived the employee to have engaged in protected activity) and that the protected activity (or the perception thereof) was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complainant shows that the adverse action took place shortly after the protected activity, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint will not be conducted or will be discontinued if the respondent, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity or, when applicable, the perception thereof.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in the prior paragraph, the Assistant Secretary will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1978.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the respondent (or the respondent's legal counsel if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The respondent will be given the opportunity to submit a written response, to meet with the investigators, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent must present this evidence within ten business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon thereafter as the Assistant Secretary and the respondent can agree, if the interests of justice so require.

§ 1978.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether there is reasonable cause to believe that the respondent retaliated against the complainant in violation of STAA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she will accompany the findings

with a preliminary order providing the relief prescribed in 49 U.S.C. 31105(b)(3). Such order will include, where appropriate, a requirement that the respondent abate the violation; reinstatement of the complainant to his or her former position, together with the compensation, terms, conditions and privileges of the complainant's employment; payment of compensatory damages (backpay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees which the complainant has incurred); and payment of punitive damages up to $250,000.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and preliminary order will inform the parties of the right to object to the findings and/or the preliminary order and to request a hearing. The findings and preliminary order also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and a copy of the findings and/or order.

(c) The findings and the preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or request for a hearing has been timely filed as provided at § 1978.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the findings and/or order.

Subpart B—Litigation

§ 1978.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1978.105. The objections and request for a hearing must be in writing and state whether the objections are to the findings and/or the preliminary order. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections will be filed with the Chief Administrative Law Judge, U.S. Department of Labor (800 K Street, NW., Washington, DC 20001), and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor for Occupational Safety and Health.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the preliminary order of reinstatement. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and preliminary order will become the final decision of the Secretary, not subject to judicial review.

§ 1978.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure and the rules of evidence for administrative hearings before the Office of Administrative Law Judges, codified at part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo* and on the record.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated, and a single hearing will be conducted.

§ 1978.108 Role of Federal agencies.

(a) (1) The complainant and the respondent will be parties in every proceeding. In any case in which the respondent objects to the findings or the preliminary order the Assistant Secretary ordinarily will be the prosecuting party. In any other cases, at the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or participate as amicus curiae at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) If the Assistant Secretary assumes the role of prosecuting party in accordance with paragraph (a)(1) of this section, he or she may, upon written notice to the appropriate adjudicatory body and the other parties, withdraw as the prosecuting party in the exercise of prosecutorial discretion. If the Assistant Secretary withdraws, the complainant will become the prosecuting party and the ALJ will issue appropriate orders to regulate the course of future proceedings.

(3) Copies of documents in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, as well as all other parties. In all cases in which the Assistant Secretary is participating in the proceeding, copies of documents must also be sent to the Associate Solicitor for Occupational Safety and Health.

(b) The Federal Motor Carrier Safety Administration, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at its discretion. At the request of the Federal Motor Carrier Safety Administration, copies of all pleadings in a case must be sent to that agency, whether or not that agency is participating in the proceeding.

§ 1978.109 Decision and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated by a preponderance of the evidence that the protected activity, or, in circumstances covered by the Act, the perception of protected activity, was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant or the Assistant Secretary has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing

evidence that it would have taken the same adverse action in the absence of any protected activity or the perception thereof.

(c) Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1978.104(e) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the order must order the respondent to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to his or her former position, together with the compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (backpay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees which the complainant may have incurred); and payment of punitive damages up to $250,000.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor for Occupational Safety and Health. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. For ALJ decisions issued on or after the effective date of these rules, all other portions of the ALJ's order will be effective ten business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board (ARB).

§ 1978.110 Decision and orders of the Administrative Review Board.

(a) The Assistant Secretary or any other party desiring to seek review, including judicial review, of a decision of the ALJ must file a written petition for review with the ARB, U.S. Department of Labor (200 Constitution Ave., NW., Washington, DC 20210), to which the Secretary has delegated the authority to act and issue final decisions under this part. Any ALJ decision issued on or after the effective date of these rules will become the final order of the Secretary unless, pursuant to this section, a timely petition for review is filed with the ARB and the ARB accepts the decision for review. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived. A petition must be filed within ten business days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review and all briefs must be served on the Assistant Secretary and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary 30 days after the filing of the petition unless the ARB, within that time, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that an order of reinstatement will be effective while review is conducted by the ARB unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be ten business days after the date of the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim, in which case the conclusion of the hearing is the date the motion for reconsideration is denied or ten business days after a new decision is issued. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision also will be served on the Assistant Secretary and on the Associate Solicitor for Occupational Safety and Health, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the final order will order the respondent to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to his or her former position, together with the compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (backpay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees the complainant may have incurred); and payment of punitive damages up to $250,000.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint.

(f) Paragraphs (a) and (b) of this section apply to all cases in which the decision of the ALJ is issued on or after the effective date of these regulations.

Subpart C—Miscellaneous Provisions

§ 1978.111 Withdrawal of STAA complaints, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her STAA complaint by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary then will determine whether to approve the withdrawal. The Assistant Secretary will notify the respondent (or the respondent's legal counsel if respondent is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. After the filing of objections to the Assistant Secretary's findings and/or preliminary order, the complainant may not withdraw his or her complaint.

(b) The Assistant Secretary may withdraw his or her findings and/or a preliminary order at any time before the expiration of the 30-day objection period described in § 1978.106, provided that no objection yet has been

filed, and substitute new findings and/or a preliminary order. The date of the receipt of the substituted findings and/or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and preliminary order become final, a party may withdraw its objections to the Assistant Secretary's findings and/or preliminary order by filing a written withdrawal with the ALJ. If a case is on review with the ARB, a party may withdraw its petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or preliminary order, and there are no other pending objections, the Assistant Secretary's findings and preliminary order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a STAA complaint and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant, and the respondent agree to a settlement. The Assistant Secretary's approval of a settlement reached by the respondent and the complainant demonstrates his or her consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ or by the ARB, if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB as the case may be.

(3) If, under paragraph (d)(1) or (d)(2) of this section, the respondent makes an offer to settle the case which the Assistant Secretary, when acting as the prosecuting party, deems to be a fair and equitable settlement of all matters at issue and the complainant refuses to accept the offer, the Assistant Secretary may decline to assume the role of prosecuting party. In such circumstances, the Assistant Secretary will immediately notify the complainant (or the complainant's legal counsel if complainant is represented by counsel) that review of the settlement offer may cause the Assistant Secretary to decline the role of prosecuting party. After the Assistant Secretary has reviewed the offer and when he or she has decided to decline the role of prosecuting party, the Assistant Secretary will immediately notify all parties of his or her decision in writing and, if the case is before the ALJ or the ARB, a copy of the notice will be sent to the appropriate official in accordance with § 1978.108(a)(2).

(e) Any settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced pursuant to § 1978.113.

§ 1978.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1978.109 and 1978.110, any person adversely affected or aggrieved by such order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation.

(b) A final order of the ARB will not be subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1978.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order, including one approving a settlement agreement as provided in § 1978.111, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1978.114 District court jurisdiction of retaliation complaints under STAA.

(a) If there is no final order of the Secretary, 210 days have passed since the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

(b) Fifteen days in advance of filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending upon where the proceeding is pending, a notice of his or her intention to file such complaint. The notice must be served on all parties to the proceeding. A copy of the notice must be served on OSHA's Regional Administrator, the Assistant Secretary, and the Associate Solicitor for Occupational Safety and Health. The complainant must file and serve a copy of the district court complaint on the above as soon as possible after the district court complaint has been filed with the court.

§ 1978.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders as justice or the administration of STAA requires.

[FR Doc. 2010–21125 Filed 8–30–10; 8:45 am]

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Federal Register

Tuesday,
August 31, 2010

Part V

The President

Proclamation 8548—Women's Equality Day, 2010

Federal Register
Vol. 75, No. 168
Tuesday, August 31, 2010

Presidential Documents

Title 3—

The President

Proclamation 8548 of August 26, 2010

Women's Equality Day, 2010

By the President of the United States of America

A Proclamation

Ninety years ago, on August 26, 1920, the ratification of the 19th Amendment to our Constitution was completed, guaranteeing women the right to vote, renewing our commitment to equality and justice, and marking a turning point in our Nation's history. As we celebrate this important milestone and the achievements and shattered ceilings of the past, we also recognize the inequalities that remain and our charge to overcome them.

In a letter to John Adams, who was then serving as a delegate to the First Continental Congress, Abigail Adams once implored her husband to "remember the ladies" in the "new code of laws" of our fledgling country. It has taken the collective efforts of daring and tenacious women over many generations to realize the principles and freedoms enshrined in our Constitution. Standing on the shoulders of these trailblazers, we pay tribute to the brave women who dot the pages of our history books, and to those who have quietly broken barriers in our workplaces, communities, and society.

We can see the remarkable fruits of past struggles and victories today. For nearly two centuries, America could only imagine a female justice sitting on the Supreme Court of the United States. Today, for the first time in our Nation's history, three women sit on the bench of the highest court of the land, and I am proud to be the first President to nominate two women to the Court. Women lead in boardrooms and in our Armed Forces, in classrooms and conference rooms, and in every sector of society. Their boundless determination has enabled today's young women to dream bigger as they see themselves reflected at the highest levels of business, communications, and public service—including in my Administration and Cabinet. If we continue to fight for our hopes and aspirations, there will be no limit to the possibilities for our daughters and granddaughters.

As we celebrate 90 years of progress on Women's Equality Day, we also recognize the realities of the present. Women comprise less than one-fifth of our Congress and account for a mere fraction of the chief executives at the helm of our biggest companies. Women hold only 27 percent of jobs in science and engineering, which are critical to our economic growth in a 21st-century economy. And, almost 50 years after the Equal Pay Act was enacted, American women still only earn 77 cents for every dollar men earn. This gap increases among minority women and those living with disabilities.

These disparities remind us that our work remains unfinished. My Administration remains committed to advancing women's equality in all areas of our society and around the world. I was proud to create the White House Council on Women and Girls to help ensure that American women and girls are treated fairly in all matters of public policy. I also appointed the first White House Advisor on Violence Against Women, whose leadership will guide my Administration in confronting violence and sexual assault against women. The Lilly Ledbetter Fair Pay Act, the first bill I signed as President, restored basic protections against pay discrimination for women, and to build upon that law, I support passage of the Paycheck Fairness

Act. I have also established the National Equal Pay Enforcement Task Force to ensure equal pay laws are vigorously enforced throughout the country. Workplace flexibility is also important to women and families, and we will continue coordinating with Federal agencies to make quality child care more affordable, promote work policies that improve work-family balance, and advance the economic development and security of all women.

Fifteen years after the world gathered in Beijing for the Fourth World Conference on Women, far too many women around the world still lack access to basic education and economic opportunity, face gender-based violence, and cannot participate fully and equally in their societies. To help address this, I appointed the first-ever Ambassador at Large for Global Women's Issues to elevate the importance of women's empowerment in all aspects of our foreign policy. From Afghanistan to the Democratic Republic of the Congo, the United States will continue its commitment to the rights of women around the world.

Women's rights are ultimately human rights, and the march for equality will not end until full parity and equal opportunity are attained in every State and workplace across our Nation. It remains our responsibility to ensure that the principles of justice and equality apply to all Americans, regardless of gender, race, ethnicity, sexual orientation, disability, or socioeconomic status. If we stay true to our founding ideals and the example of those who insisted upon nothing less than full equality, we can and will perpetuate the line of progress that runs throughout our Nation's history for generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 26, 2010, as Women's Equality Day. I call upon the people of the United States to celebrate the achievements of women and recommit themselves to the goal of true gender equality in this country.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

H.R. 2097/P.L. 111–232
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H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the "John C. Godbold Federal Building". (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the "President Ronald W. Reagan Post Office Building". (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the "Paula Hawkins Post Office Building". (Aug. 16, 2010; 124 Stat. 2496)

H.R. 5552/P.L. 111–237
Firearms Excise Tax Improvement Act of 2010 (Aug. 16, 2010; 124 Stat. 2497)

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